

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF PENNSYLVANIA

3 UNITED STATES OF AMERICA, :Criminal Action No.:  
4 Plaintiff, :2:19-cr-00717-GAM-1  
5 v :  
6 WILLIAM A. MERLINO :  
7 Defendants. :Philadelphia, Pennsylvania  
8 :August 4, 2022 at 9:30 a.m.  
9 :  
10 . . . . .

11 TRANSCRIPT OF CRIMINAL JURY TRIAL DAY TWO  
12 BEFORE THE HONORABLE GERALD A. MCHUGH  
13 UNITED STATES DISTRICT COURT JUDGE

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1 (The trial commenced at 09:35:28)

2 THE COURT CLERK: -- (unintelligible)

3 Honorable Gerald McHugh, presiding.

4 THE COURT: All right counsel, if we're  
5 ready for the jurors we'll bring them in.

6 MS. BURNES: Yes, Your Honor.

7 MR. GAMBURG: Good morning.

8 THE COURT: And counsel, I -- I don't  
9 rearrange the jurors in the box, I just let them stay in  
10 the seats that they're in.

11 MS. BURNES: Mr. Henry advised us.

12 THE COURT: All right.

13 MS. BURNES: Thank you.

14 THE COURT CLERK: All rise.

15 THE COURT: Good morning, ladies, gentlemen  
16 and counsel, please be seated, welcome back. One -- one  
17 of your number was feeling poorly this morning, they had a  
18 fever and aches and I told them they should stay home and  
19 we will continue, they did want you to know they took a  
20 COVID rapid test that was negative, so they thought you  
21 would appreciate receiving that information.

22 Again, you've got your air filtration  
23 inside, by all means use it and anybody who wants to wear  
24 a mask, do so. And with that, we will continue. Ms.  
25 Burnes.

1 MS. BURNES: Good morning, Your Honor, the  
2 government calls Postal Inspector Caitlin Piasecki.

3 THE COURT: All right.

4 MS. BURNES: Inspector Piasecki.

5 THE COURT CLERK: Please raise your right  
6 hand. Do you swear or affirm the testimony you shall give  
7 to this court will be the truth, the whole truth and  
8 nothing but the truth so help you God and you do so  
9 affirm?

10 MS. PIASECKI: I do.

11 WITNESS; CAITLIN PIASECKI; Sworn

12 THE COURT CLERK: Thank you, please be  
13 seated. Please state your name and spell it for the  
14 record, please.

15 THE WITNESS: Caitlin Piasecki, C-A-I-T-L-  
16 I-N P-I-A-S-E-C-K-I.

17 THE COURT: Proceed. Thank you.

18 DIRECT EXAMINATION

19 BY MS. BURNES:

20 Q. Good morning Inspector Piasecki, can  
21 you tell the Jury where you work, please?

22 A. I work for the U.S. Postal Inspection  
23 Service which is the law enforcement branch of the U.S.  
24 Postal Service.

25 Q. And where are you assigned?

1 A. Belmar, New Jersey.

2 Q. How long have you been a postal  
3 inspector?

4 A. Just about five years.

5 Q. And what sort of work do you do as a  
6 postal inspector?

7 A. We investigate all crimes involving  
8 the mail and postal employees, so mail theft, mail fraud,  
9 bank fraud, money laundering.

10 Q. Do you work with other agencies when  
11 the use of the U.S. Mail is used to commit a federal  
12 crime?

13 A. Yes, we do.

14 Q. And I want to direct your attention to  
15 the investigation of William Merlino. In the summer of  
16 2018 were you contacted by Special Agents of the F.D.A.,  
17 the Food and Drug Administration Office of criminal  
18 investigations related to a mailing?

19 A. Yes.

20 Q. And what was -- what was the nature of  
21 that contact?

22 A. Special Agent Arcari had contacted me  
23 regarding an undercover purchase he had made for D.N.P.  
24 and he wanted to know what additional information postal  
25 might have since it was a Click-N-Ship account used.

1 Q. Okay. And showing you what's been  
2 marked as Twenty-nine T which is already in evidence.

3 MS. BURNES: And if we could have put it up  
4 on the screen, Twenty-nine is already in evidence.

5 BY MS. BURNES: (Cont'g.)

6 Q. Is -- is this the label that you and --  
7 -- and the postal that you were asked to investigate?

8 A. Yes.

9 Q. Okay. And just -- just taking a look  
10 at the -- you said that the -- you said that it was a  
11 Click-N-Ship account. What -- what is Click-N-Ship?

12 A. Click-N-Ship is a service that the  
13 Postal Service provides to customers where they can create  
14 mailings at their house, print them out and then bring  
15 them into the post office or have a carrier pick it up  
16 from their residence. And it can be prepaid or they could  
17 pay when they drop it.

18 Q. And so when a customer signs up for a  
19 Click-N-Ship account, is there data maintained by the  
20 United States Postal Service?

21 A. Yes, there is.

22 Q. And then handing you the other three  
23 parcels we looked at yesterday, Fifty-four T, Sixty-nine  
24 T, and Eighty-six T.

25 A. Thank you.



1 Q. During the course of your  
2 investigation, did you -- what was your role in the  
3 investigation of -- of these mailing labels?

4 A. To also provide information for the  
5 ones that were Click-N-Ship to see if it was associated to  
6 the same accounts and also just identify, you know, when  
7 they were dropped or any additional information that  
8 postal captured on these mailings.

9 Q. Okay. And after looking at the  
10 labels, then did you -- did you pull data from United  
11 States Postal Service records?

12 A. Yes, I did.

13 Q. And fair to say that that was hundreds  
14 of lines of data?

15 A. Yes.

16 Q. And directing your attention then to  
17 Government's Exhibit Eight -- you can turn to it in your  
18 binder, if we can publish it (unintelligible) only. Can  
19 you tell the Jury what's depicted on Government's Exhibit  
20 Eight, there's one page but there's multiple pages behind  
21 it.

22 A. Yeah, this is a summary of the two  
23 accounts that I identified linked to this investigation  
24 utilized by the defendant to send mailings.

25 Q. Okay.

1 MS. BURNES: And Your Honor, the government  
2 moves Government Exhibit Eight into evidence.

3 MR. GAMBURG: No objection.

4 THE COURT: Admitted.

5 MS. BURNES: If we could publish it to the  
6 Jury please.

7 BY MS. BURNES: (Cont'g.)

8 Q. So let's take a look at the first page  
9 of Government's Eight, can you tell the Jury just what's -  
10 - what's depicted on each of those -- well, let's start at  
11 the bottom. What data did you pull to create this  
12 summary, that's Government's Exhibit Eight?

13 A. So this was all the available mailing  
14 history for the Click-N-Ship accounts I identified which -  
15 - there's one ending in seven three six and one ending in  
16 seven three eight, beginning in November of 2017 and  
17 pulled it through July of 21 -- 2022.

18 Q. Okay. And so the -- the first  
19 account, the account number ending in seven three six,  
20 what's the name on that account according to postal  
21 records?

22 A. Nancy O'Brian.

23 Q. And when -- when did the mailing start  
24 on that account?

25 A. Well, they go back before 2017, but

1           because this is when the investigation started, that's  
2           when we -- we pulled the records from -- which is November  
3           of 2017.

4                     Q.    Okay.  And so if you pulled from  
5           November 1st of 2017, what was the first mailing you had?

6                     A.    So on 11/13/2017 was the first mailing  
7           within that timeframe we identified.

8                     Q.    Okay.  And there's a column that says  
9           end, what does that depict?

10                    A.    So that's the last time we had any  
11           mailings on that Click-N-Ship account, which is November  
12           28th, 2018.

13                    Q.    Okay.  For the account number ending  
14           with seven three six?

15                    A.    Correct.  The one listed for Nancy  
16           O'Brian.

17                    Q.    And what's the email associated with  
18           the Nancy O'Brian account?

19                    A.    Merlin@acm.work.

20                    Q.    Okay.  So directing your attention  
21           then to the second row, there's another account that ends  
22           with seven three eight, what's the account name on that  
23           account?

24                    A.    Dr. William A. Merlino.

25                    Q.    And when do mailings begin on the

1           seven three eight Merlino account?

2                   A.    11/29/2018.

3                   Q.    Okay.  So you pulled data going back  
4           to 2017, but the first mailing is November 29th of 2018.  
5           Is that right?

6                   A.    Yes, that's correct.

7                   Q.    And when did the mailings end on the  
8           Merlino seven three eight account?

9                   A.    In January 11, 2022.

10                  Q.    And what's the email associated with  
11           the -- the Merlino account seven three eight?

12                  A.    Simcare@gmail.com.

13                  Q.    So let's take a look at the second  
14           page of Government's Exhibit Eight.

15                  MS. BURNES:  And if we could enlarge that  
16           second page.  Still pretty small, let's take the -- the --  
17           the left-hand side of the page.

18                  BY MS. BURNES:  (Cont'g.)

19                  Q.    Can you just tell the Jury while we're  
20           pulling up an enlargement, what is depicted on the second  
21           page of Government's Eight?

22                  A.    Sure.  Postal -- if you sign up online  
23           for any of the postal services, they require a username  
24           and some identifying information.  And so this is pulled  
25           from E Reg, which is just our online registration

1 platform. So this is what's associated to the first  
2 Click-N-Ship account ending in seven three six.

3 Q. Okay. So this is the seven three six  
4 account, and if we look at the account details, what is  
5 the name associated with the account?

6 A. Nancy O'Brian.

7 Q. And what is the address associated  
8 with the account?

9 A. 4612 Somers Point Road, Mays Landing,  
10 New Jersey 08330.

11 Q. And directing your attention over to  
12 the right-hand side, what's the username associated with  
13 this account?

14 A. W Merlin.

15 Q. Okay. And just above this business  
16 account banner, there was another section in blue. And  
17 just starting from the left of that blue line, that shows  
18 the account number of seven three six?

19 A. Correct.

20 Q. Okay. And under Nancy O'Brian's name,  
21 what's -- what's depicted there?

22 A. That's just a customer registration  
23 I.D. that's P.P.S. SimCare, so at some point that was  
24 registered -- linked to this account.

25 Q. Okay. Let's move on to the third page

1 of Government's Exhibit Eight.

2 MS. BURNES: And if we can enlarge it?

3 BY MS. BURNES: (Cont'g.)

4 Q. Can you tell the Jury what's depicted  
5 on the third page of Government's Eight?

6 A. Yeah, this is just a summary of all  
7 the mailings between -- between the timeframe discussed,  
8 November 2017 to November 2018. And it's just broken down  
9 by month all the mailings on that Click-N-Ship account.

10 Q. Okay. So for November 2017 how many  
11 mailings on the seven three six account?

12 A. Six.

13 Q. And for December 2017 how many  
14 mailings?

15 A. Twenty-nine.

16 Q. January of 2018?

17 A. Eighty-one.

18 Q. February of 2018?

19 A. Fifty-two.

20 Q. March of 2018?

21 A. Sixty-six.

22 Q. Okay. It continues through March  
23 until November of 2018. Is that right?

24 A. That's correct.

25 Q. And what's the total number of

1 mailings on account seven three six for the time period  
2 you identified?

3 A. Four hundred and thirty-five.

4 Q. Okay. And as -- as we take a look at  
5 government's -- if we turn to the next page, page one of  
6 government's -- seven three six.

7 MS. BURNES: And just enlarge -- enlarge  
8 that page to -- to the best you can, Mr. Conroy.

9 BY MS. BURNES: (Cont'g.)

10 Q. Can you -- can you just tell the Jury  
11 what is depicted then on -- on this page across the  
12 columns?

13 A. Sure. So with the Click-N-Ship  
14 accounts we're able to see the sender and recipient  
15 information. So this first page is all the details on the  
16 recipients of the mailings between November of 2017 and  
17 November of 2018.

18 Q. Okay. So let's take a look at line  
19 twelve, in the middle of the page.

20 A. Okay.

21 Q. Who is the recipient of the mailing  
22 from the Nancy O'Brian Click-N-Ship account on or about  
23 December 13th of 2017?

24 A. It's listed as David Freek (phonetic  
25 spelling).

1 Q. Okay. And what -- what country is  
2 that recipient associated with?

3 A. Canada.

4 Q. Okay. Let's take a look at line  
5 sixteen, and that indicates a mailing on December 23rd of  
6 2017, you want to attempt the recipient's name?

7 A. I'll give it a try. (unintelligible)

8 Q. And what -- what country is that  
9 customer associated with?

10 A. Romania.

11 Q. Okay. So directing your attention to  
12 page -- move forward to page five, and line one twenty-  
13 three. If we can look at lines one twenty-three and one  
14 twenty-four, there's a recipient on February 2nd of 2018,  
15 there's two mailings on one twenty-three and one twenty-  
16 four?

17 A. Yes.

18 Q. And the first contact's name, what's -  
19 - what's the name associated?

20 A. Jack Knapman.

21 Q. And what -- what country is that  
22 customer in?

23 A. Great Britain and Northern Ireland.

24 Q. And then on the next line, is that  
25 that same Romanian customer that we just took a look at?



1 A. Yes.

2 Q. Let's move forward to page eight and  
3 line one ninety-six. There's a mailing on March 13th of  
4 2018. What's the recipient contact's name?

5 A. Jack Knapman.

6 Q. And again, he's in the U.K.?

7 A. Correct.

8 Q. Moving ahead to page fourteen. And if  
9 we take a look at line three ninety-nine and line four o  
10 seven. Actually, I skipped too far ahead, page fourteen,  
11 let's start with line three seventy-four and the mailing  
12 on 08/30/2018.

13 MR. GAMBURG: Starts in line three seventy-  
14 four?

15 MS. BURNES: Line three seventy-four.

16 BY MS. BURNES: (Cont'g.)

17 Q. Can you just read to the Jury what's  
18 depicted on line three seventy-four?

19 A. Sure. Line three seventy-four, there  
20 it is, is a mailing on 08/30/2018. The tracking number  
21 ends in three seven two six, the recipient contact is  
22 Bryan, the rest is redacted, in Springfield, Pennsylvania.

23 Q. Okay. And is that line the -- the  
24 envelope that's depicted at Twenty-nine P?

25 A. It is.

1 Q. Okay. And that's -- that's the label  
2 that you first took a look at to get the status. Is that  
3 correct?

4 A. That's correct.

5 Q. And so moving forward, let's -- let's  
6 take a look at line four o seven. And lines -- yeah, line  
7 three ninety-nine and one forty-seven. Are there two  
8 other mailings to Bryan in Springfield, P.A. that are  
9 reflected on the data?

10 A. Yes, that's correct.

11 Q. And does the -- does the parcel at  
12 Fifty-four P correspond to one of those lines of data?

13 A. Yeah, line four o seven.

14 Q. Okay. And so just directing your  
15 attention to the bottom of the page, line four twelve  
16 through four nineteen. We can just look at a couple of  
17 customer names. So mailing 11/13/2018 to a Justin  
18 (unintelligible)?

19 A. Yes.

20 Q. Okay. And directing your attention to  
21 line four one four, is that a mailing on November 13th,  
22 2018 to that same customer, David Freek?

23 A. Yes.

24 Q. And on line four one seven an  
25 additional mailing, on 11/14 to that same customer?

1 A. Yes.

2 Q. And that also to Canada?

3 A. Correct.

4 Q. Let's take a look at line four one  
5 nine, what's the recipient name?

6 A. Jason Epps (phonetic spelling).

7 Q. Okay. And what state is he located  
8 in?

9 A. Illinois.

10 Q. Okay. So moving forward to the second  
11 clip and -- Click-N-Ship account you identified in this  
12 case.

13 MS. BURNES: And that's I think it's page  
14 thirty of the document, Mr. Conroy?

15 BY MS. BURNES: (Cont'g.)

16 Q. Can you show the Jury the -- the  
17 (unintelligible) page for the second Click-N-Ship account?

18 MS. BURNES: And if we can enlarge that on  
19 -- on the left-hand side?

20 BY MS. BURNES: (Cont'g.)

21 Q. Can you tell the Jury what's depicted  
22 on this page?

23 A. Yeah, this is the second Click-N-Ship  
24 account I identified linked to William Merlino based on  
25 another U-C purchase made by Special Agent Arcari, sorry.

1 Q. And this is the seven three eight  
2 account. Is that right?

3 A. Yes, that's correct.

4 Q. What's the name associated with this  
5 account?

6 A. The name is Dr. William A. Merlino.

7 Q. And what is the address on this  
8 account?

9 A. 4630 Catawba Ave. in Mays Landing, New  
10 Jersey 08330.

11 Q. And what's the email on this account?

12 A. Simcare@gmail.com.

13 Q. Now above that blue banner that says  
14 business account, if we can take a look at the blue banner  
15 on top of that. Is there likewise additional user  
16 information described on this account?

17 A. Yeah, underneath William Merlino's  
18 name is the Agro Fortis Supply business.

19 Q. Okay. Let's move on to the next page.  
20 Can you tell the Jury what is depicted on this page of  
21 Government's Exhibit Eight?

22 A. Yeah, these are all the Click-N-Ship  
23 mailings during the relevant timeframe of November 2018 to  
24 March 2019.

25 Q. Okay. And if you take a look then at

1 -- what -- what's the total number of mailings?

2 A. Eighty-seven.

3 Q. And how many mailings are done in  
4 December of 2018?

5 A. Sixty-six.

6 Q. Okay. So directing your attention  
7 then to the following page, page thirty-one. Will you  
8 take a look at lines six and eight? On December 3rd, 2018  
9 is there a package to Texas, on line six?

10 A. Yes.

11 Q. And what's that listed as the contact  
12 name?

13 A. Michael Murphy (phonetic spelling) in  
14 Killeen, Texas.

15 Q. And with respect to line eight, on  
16 December 3rd, 2018 is there a package to Sunnyvale,  
17 California?

18 A. Yeah, addressed to Robert Levy  
19 (phonetic spelling).

20 Q. And let's take a look at line ten.  
21 Line ten has a redaction, can you tell the -- the Jury  
22 what that is?

23 A. This is the fourth undercover purchase  
24 made by Special Agent Arcari which is when we identified  
25 this Click-N-Ship account.

1 Q. Okay. Now this is a different name,  
2 was this -- was this a purchase made at Special Agent  
3 Arcari's direction using an additional --

4 A. Correct.

5 Q. -- undercover name?

6 A. Yes.

7 Q. Okay. And so the -- the -- the -- the  
8 name Jason in Pittsburgh P.A., does that correspond to the  
9 parcel at Eighty-six P?

10 A. It does.

11 Q. Okay. So I'm -- I'm going to direct  
12 your attention then --.

13 MS. BURNES: Thank you, Mr. Conroy, we can  
14 take that down.

15 BY MS. BURNES: (Cont'g.)

16 Q. I'm going to direct your attention,  
17 Inspector Piasecki, to February 1st of 2019. Did you  
18 participate with other agencies surveillance of William  
19 Merlino on that date?

20 A. Yes, I did.

21 Q. And why?

22 A. We wanted to identify him traveling  
23 from his residence to the post office, which we were told  
24 is a fairly regular occurrence. So we coordinated,  
25 Special Agent Arcari and I and Special Agent Lento from

1 Homeland Security Investigations.

2 Q. Okay. And in terms of the  
3 investigation at that point, had Special Agent Arcari done  
4 another undercover buy in advance of the surveillance?

5 A. Yes, he had done one the day prior in  
6 hopes that in the morning we would capture him with that  
7 undercover mailing to go into the post office.

8 Q. Now on February 1st on that morning of  
9 2019, where were you position for surveillance?

10 A. I was at the Mays Landing Post Office.

11 Q. And at approximately nine thirty-four  
12 that morning, what did you see?

13 A. Well, I was first in the lobby, which  
14 has like glass windows to the outside. So I saw a white  
15 Mercedes S.U.V. pull into the parking lot and Merlino, you  
16 know, got out. So at that point, I walked into like the  
17 lobby of the post office and observed him, you know,  
18 bringing in a bag of mailings and putting them over the  
19 counter with the clerk.

20 Q. Okay. And so you saw him approach the  
21 clerk and -- and conduct mail transactions?

22 A. Correct.

23 Q. And after -- did you see then the  
24 defendant leave that post office after he completed his  
25 postal business?

1           A.    Yes, so after he dropped the parcels  
2           off, we continued to surveil him from the post office, and  
3           he made a stop at Walmart and then headed home, which is  
4           at -- which time we ended the surveillance and went back  
5           to the post office to review the mailings dropped by  
6           Merlino.

7           Q.    Okay. So when you say we returned to  
8           the post office, who went back to the post office?

9           A.    Special Agent Arcari and I.

10          Q.    Okay. And if you could -- if you  
11          could take a look at Government's Exhibit Sixty-nine P,  
12          which is already in evidence. And if we could put that on  
13          the screen for the Jury.

14          On February 1st, then did you -- did you  
15          retrieve this parcel from the post office?

16          A.    Yes, we did.

17          Q.    And directing you attention to the  
18          screen --.

19          MS. BURNES: And just for the parties and  
20          not the Jury if we could bring up Government's Exhibit  
21          Seventy?

22          BY MS. BURNES: (Cont'g.)

23          Q.    It's upside down, but can you describe  
24          what -- what's depicted on Government's Exhibit Seventy?

25          A.    Yeah, it's the initials B.A., which



1 Bryan wrote on the parcel when we went in the back to  
2 retrieve or review the ones that were dropped that day.

3 Q. Okay. And does the picture at that --  
4 does Government's Exhibit Seventy fairly and accurately  
5 depict that?

6 A. Yes.

7 Q. Okay.

8 MS. BURNES: The government moves  
9 Government's Exhibit Seventy into evidence?

10 MR. GAMBURG: No objection.

11 THE COURT: Admitted.

12 MS. BURNES: Permission to --

13 THE COURT: You may.

14 MS. BURNES: -- permission to publish?

15 BY MS. BURNES: (Cont'g.)

16 Q. And can you just tell the -- tell the  
17 Jury where the initials are?

18 A. On this photo, it's in the top right  
19 corner. But on the actual mailing, it's in the bottom  
20 left corner, so we initialed it and then let it go through  
21 the mail stream where it arrived at the undercover  
22 purchase or undercover address.

23 Q. Okay. Thank you Inspector Piasecki, I  
24 have no more questions.

25 MR. GAMBURG: Just a couple, if I may.

1 CROSS EXAMINATION

2 BY MR. GAMBURG:

3 Q. Good morning.

4 A. Good morning.

5 Q. So with this account, how does one pay  
6 for it?

7 A. Well, the account itself is free, it's  
8 the mailings, you can either prepay or pay with a credit  
9 card.

10 Q. Okay. And there was a credit card  
11 associated with this file, right?

12 A. Correct.

13 Q. And it was Dr. William Merlino, right?

14 A. I believe so.

15 Q. Okay. And the -- the name on the  
16 account was Dr. William Merlino, right?

17 A. There's two accounts, which one do you  
18 mean?

19 Q. Ms. O'Brian you came to learn worked  
20 for Dr. Merlino as his office manager for twenty years,  
21 right?

22 A. Correct.

23 Q. And the other one was in Dr. Merlino's  
24 name, right?

25 A. Yes.

1 Q. And the address 4630 Catawba in Mays  
2 Landing, that is the same address just a different name as  
3 what you put up on C Sixty-nine, right?

4 MR. GAMBURG: Can that be put back up  
5 please, G Sixty-nine?

6 BY MR. GAMBURG: (Cont'g.)

7 Q. They just changed the name of the  
8 street, but it's the same house, right?

9 A. Are you talking about the 4630 Somers  
10 Point?

11 Q. Yeah.

12 A. Yeah.

13 Q. Same house, just changed the name of  
14 the street, correct?

15 A. As I understand it, Catawba was like  
16 an old name for the same street. It was sort of like  
17 legacy so it was one and the same, yes.

18 Q. Okay. And when you physically  
19 surveilled him, he's not covering his face, right?

20 A. No.

21 Q. Not changing his appearance, right?

22 A. No.

23 Q. So he wasn't hiding anything, he had  
24 the account in either his name or his office manager's  
25 name, right?

1 A. Right.

2 Q. Paid for by credit card in his name?

3 A. Right.

4 Q. To his home address, correct?

5 A. I think different variations of his  
6 address but yes.

7 Q. But I mean, it's the same house.  
8 There's different street names because Mays Landing kept  
9 changing the street names?

10 A. If that's possible, I'm not sure on  
11 the street name.

12 Q. You just told us that Catawba Drive  
13 became Somers Point Road, right?

14 A. Right. But there's also the 4612,  
15 that's why I'm saying I wasn't sure which.

16 Q. Okay. Well -- fine. 4612 that's also  
17 a physical structure, right?

18 A. Right.

19 Q. Not being sent to any dummy addresses  
20 or the return address isn't a dummy address, correct?

21 A. Well, I think 4630 would possibly  
22 result in a return to sender because it's not the proper  
23 address.

24 Q. Did you ever have one that was  
25 returned to sender in all these various four hundred and

1 something mails?

2 A. Not these, but there was others served  
3 to the 4630, there was at least one that got sent back.  
4 Not one of his sent out, just an unrelated mailing.

5 Q. Dr. Merlino just some other person?

6 A. No, to Dr. Merlino, but not one that  
7 he had sent out, one he was receiving at 4630, unrelated  
8 to these mailings.

9 Q. Okay. But -- but my point is 4630 is  
10 a physical house?

11 A. Correct.

12 MR. GAMBURG: That's all I have, Judge.

13 THE COURT: Anything further?

14 MS. BURNES: Briefly, Your Honor.

15 RE-DIRECT EXAMINATION

16 BY MS. BURNES:

17 Q. If we can take a look at Government's  
18 Eight, the second -- the Merlino Click-N-Ship account.  
19 That account was opened in 2018, is that right?

20 A. Yes, it was opened I think on the date  
21 of the first mailing, which I think -- if you go to the --  
22 yeah, it'll show you when it was -- the registration date  
23 on the right. No -- yeah --.

24 Q. You can just testify --

25 A. Yeah, okay.

1 Q. -- as to what it is.

2 A. Yeah. So this account was registered  
3 on 11/29/2018, and then the history for the other account,  
4 it looks like the password was no longer working, which is  
5 why it appears he moved to this new account.

6 Q. Okay. So at -- this account being  
7 opened on November 29th, 2018. Is that --

8 A. That's when it was opened.

9 Q. -- that's his second account?

10 A. Yes.

11 Q. And you testified on cross examination  
12 that Catawba was an old name for Somers Point Road in Mays  
13 Landing. Is that right?

14 A. Correct.

15 Q. And yet the 2018 account used the  
16 Catawba address?

17 A. Yeah. I -- I can't -- okay, yeah,  
18 it's just really small, 4630 is still there, yeah.

19 Q. Okay, thank you.

20 MR. BURNES: No further question.

21 MR. GAMBURG: Nothing based on that, Your  
22 Honor.

23 THE COURT: All right. The witness is  
24 excused, thank you.

25 MS. BURNES: The government calls Special

1 Agent Kristin Lento. I'm going to go through some  
2 exhibits.

3 THE COURT: Sure.

4 THE COURT CLERK: Please raise your right  
5 hand. Do you swear or affirm the testimony you shall give  
6 to this court shall be the truth, the whole truth and  
7 nothing but the truth so help you God and you do so  
8 affirm?

9 MS. LENTO: I do.

10 WITNESS; KRISTIN LENTO; Sworn

11 THE COURT CLERK: Thank you, please be  
12 seated. Please state your full name and spell it for the  
13 record please?

14 THE WITNESS: Kristin Lee Lento, L-E-N-T-O.

15 DIRECT EXAMINATION

16 BY MS. BURNES:

17 Q. Good morning, Special Agent Lento, can  
18 you tell the Jury how you're employed?

19 A. I'm a special agent with the  
20 Department of Homeland Security.

21 Q. And what's Homeland Security  
22 Investigations?

23 A. Excuse me?

24 Q. What is Homeland Security  
25 Investigations?

1                   A.    We are the investigate --  
2                   investigative branch for Homeland -- for the Department of  
3                   Homeland Security.

4                   Q.    And how long have you been with  
5                   Homeland Security Investigation for?

6                   A.    I've been a special agent for twelve  
7                   years.

8                   Q.    And prior to being a special agent  
9                   with H.S.I., what was your job?

10                  A.    I was a deportation officer under  
11                  Homeland Security with Immigration and Customs  
12                  Enforcement.

13                  Q.    What kinds of work do you do as a  
14                  special agent for Homeland Security Investigations?

15                  A.    I investigate crimes involving  
16                  narcotics, child exploitation, importation and exportation  
17                  of illegal goods, terrorist activity.

18                  Q.    And during the course of your duties  
19                  as a special agent for Homeland Security Investigations,  
20                  are you familiar with U.S. Customs and Border Protection  
21                  records?

22                  A.    Yes.

23                  Q.    And how did you become familiar with  
24                  those records?

25                  A.    During the course of my duties we



1 receive referrals from Customs and Border Protection in  
2 regards to seizures that they take-in on the border, and  
3 then they notify us to do the investigations for them.

4 Q. And -- and just for the Jury's  
5 understanding, when you refer to the border, you mean the  
6 physical border of the United States. Is that right?

7 A. Correct.

8 Q. An airport is also a border of the  
9 United States?

10 A. Correct.

11 Q. So I'm directing your attention to the  
12 summer of 2018, did you receive information of the seizure  
13 of 2,4-Dinitrophenol addressed to William Merlino?

14 A. I did.

15 Q. And let's take a look for  
16 identification purposes only at Government's Exhibits Four  
17 and Five. What's depicted at Government's Exhibit Four?

18 A. It's a notice of seizure to the  
19 claimant, William Merlino that was dated on July 17th,  
20 2018.

21 Q. And let's take a look at Government's  
22 Exhibit Five, what's depicted at Government's Exhibit  
23 Five?

24 A. This is the letter that William  
25 Merlino wrote on August 1st, 2018 in response to the

1 seizure notice that Customs and Border Patrol had sent him  
2 --  
3 Q. Okay.  
4 A. -- sent him.  
5 Q. And are all these records kept in the  
6 course of regularly conducted business?  
7 A. Yes.  
8 MS. BURNES: I move to admit Government's  
9 Exhibit Four and Five.  
10 THE COURT: Mr. Gamburg, is there any  
11 objection to four or five?  
12 MR. GAMBURG: No, Your Honor.  
13 THE COURT: Admitted.  
14 MS. BURNES: If we could publish  
15 Government's Exhibit Four to the Jury, please?  
16 BY MS. BURNES: (Cont'g.)  
17 Q. Okay. So if we can just take a look  
18 at the -- at the top of the page, and if you can explain  
19 to the Jury what's -- what's depicted at the top of the  
20 page here?  
21 A. The notice of seizure and information  
22 to claimants.  
23 Q. And what's the date of this document?  
24 A. July 17th, 2018.  
25 Q. Who is it addressed to?

1 A. William Merlino.

2 Q. And at what address?

3 A. 4630 Somers Point Road, Mays Landing,  
4 New Jersey 08330.

5 Q. And directing your attention to after  
6 the (unintelligible) what's depicted here?

7 A. This is to notify you that U.S.  
8 Customs and Border Protection seized the property  
9 described below, the air waybill number at the FedEx  
10 facility in Memphis, Tennessee on May 25th, 2018.

11 Q. And what's the property described in  
12 this notice of seizure?

13 A. Two point one kilograms of 2,4-  
14 Dinitrophenol.

15 Q. So let's take a look moving down to  
16 two paragraphs with respect to the importation. What was  
17 Merlino advised of by Customs and Border Protection?

18 A. That the importation or attempted  
19 importation of 2,4-Dinitrophenol is a prohibited criminal  
20 offense.

21 Q. Okay.

22 MS. BURNES: So we can take that down and  
23 let's take a look at Government's Exhibit Five.

24 BY MS. BURNES: (Cont'g.)

25 Q. And directing your attention to the

1 top of the page -- well, if we can start at the very top,  
2 is there a letterhead on this document?

3 A. Yes, there is.

4 Q. And who's the letterhead?

5 A. William A. Merlino, M.D. located at  
6 4630 Somers Point Road, Mays Landing, New Jersey 08330.

7 Q. Okay. And what's the date of this  
8 document?

9 A. August 1st, 2018.

10 Q. And tell the -- tell the Jury -- then  
11 what does this document represent?

12 A. So this is his response to the seizure  
13 notice from Customs and Border Patrol.

14 Q. Okay. And if we take a look at the  
15 bottom of the page, does it contain a signature?

16 A. Yes, it does.

17 Q. And what is the signature?

18 A. It says sincerely, William A. Merlino.

19 Q. And is there also a -- a time and date  
20 stamp on -- ?

21 A. Yes, there is, from U.S. Customs and  
22 Border Protection they received it on August 17th, 2018,  
23 Memphis, Tennessee.

24 Q. Okay. So let's take a look at the  
25 body of the letter on Government's Exhibit Five in -- in

1 response to the seizure of two kilograms of 2,4-  
2 Dinitrophenol, what did Merlino state to Customs and  
3 Border, the first paragraph of this material?

4 A. This material is not prohibited from  
5 importation to United States as all U.S. vendors acquired  
6 from India or China, see chemical book reference attached.

7 Q. Okay. And what's the next statement  
8 that he said?

9 A. This is not a modified chemical to be  
10 substantially similar to an existing drug in that it is a  
11 simple chemical compound formulated in 1892.

12 Q. And what's the next statement he made?

13 A. This product cannot be considered a  
14 drug as it is toxic to humans, see attached M.S.D.S.  
15 sheet.

16 Q. And what final words in that  
17 statement?

18 A. D.N.P. is used as an herbicide and for  
19 preserving wood.

20 Q. The -- the letter that forms the first  
21 page of Government's Exhibit Five, is it followed by  
22 several pages of attachments?

23 A. Yes.

24 Q. Okay. So let's move forward five  
25 pages to --.

1 MS. BURNES: That -- that's it Mr. Conroy,  
2 thank you.

3 BY MS. BURNES: (Cont'g.)

4 Q. If we can take a look at the -- at the  
5 top of the page, what's -- what's -- what's the title on  
6 the top of this page?

7 A. 2,4-Dinitrophenol chemical properties  
8 uses and production.

9 Q. Okay. And directing your attention to  
10 the general description, what -- what's depicted here?

11 A. Solid yellow crystals explosive when  
12 dry or with less than fifteen percent water, the primary  
13 hazard is from blasts of an instantaneous explosion and  
14 not flying projectiles and fragments. Slightly soluble in  
15 water and soluble in either -- in solutions of sodium or  
16 potassium hydroxide.

17 Q. Let's take a look at the health  
18 hazards on this page.

19 A. Dust, poisonous if inhaled or if skin  
20 is exposed; solid, poisonous if swallowed.

21 Q. Okay. And let's move forward then two  
22 more pages, just take a look at the top of the page,  
23 what's -- what's this page titled?

24 A. Material Safety Data Sheet for 2,4-  
25 Dinitrophenol hydrazine, M.S.D.S.

1 Q. Okay. So that's a slightly different  
2 word than we saw on the first -- on the first page?

3 A. Correct.

4 Q. Okay. Directing your attention then  
5 to the bottom of that page there's a -- there's a hazards  
6 in the identification section?

7 A. Yes.

8 Q. What does it say with respect to - to  
9 potential acute health effects?

10 A. Very hazardous in case of ingestion of  
11 inhalation, hazardous in case of skin contact. It's an  
12 irritant permeator of eye contact, it's an irritant.

13 Q. Okay. And moving forward in this  
14 M.S.D.S. sheet, three more pages to Section 11  
15 toxicological information. What does it say with respect  
16 to the chronic effects on humans?

17 A. Not the - the substance is toxic to  
18 lungs, the nervous system and mucous membranes.

19 Q. And are there other toxic effects on  
20 humans depicted in this document?

21 A. Very hazardous in case of ingestion,  
22 of inhalation, hazardous in case of skin contact.

23 Q. Let's move forward two more pages.  
24 And at the top of the page, what's depicted here. Who is  
25 the seller on -- on this sheet?

1                   A.    This is the Sigma-Aldrich safety data  
2                   sheet.

3                   Q.    And what's the product identified  
4                   here?

5                   A.    2,4-Dinitrophenol.

6                   Q.    And let's take a look at Section 2,  
7                   the hazards identification here. With respect to the  
8                   Section 2.1, what's the classification -- the G.H.S.  
9                   classification?

10                  A.    In accordance with 29 CFR 1910 it's  
11                  acute toxicity oral, acute toxicity inhalation, acute  
12                  toxicity dermal, and specific target organ toxicity and  
13                  acute aquatic toxicity.

14                  Q.    And with respect to the pictures  
15                  there, are you able to describe what's in -- in the first  
16                  diamond box there?

17                  A.    A skull and crossbones.

18                  Q.    What's the signal word?

19                  A.    Danger.

20                  Q.    Okay. And -- and this was all  
21                  contained in the documents that Merlino sent to C.B.P. to  
22                  get his D.N.P. back.

23                  A.    Yes.

24                  Q.    Is that right?

25                  A.    That is correct.



1 Q. Okay. So let's -- let's move forward  
2 to September 27th of -- of 2018, as -- as a result of  
3 receipt of this information, did you join F.D.A. office of  
4 criminal investigation in their investigation of William  
5 Merlino?

6 A. Yes, I did.

7 Q. And directing your attention to  
8 September 27th of 2018, did you and Special Agent Bryan  
9 Arcari do a trash-pull at 4630 Somers Point, Mays Landing?

10 A. Yes, we did.

11 Q. So I want to show you --.

12 MS. BURNES: And if we could pull up for  
13 identification only Six and Seven. I'm going to approach  
14 with Government's Six P and Seven P.

15 BY MS. BURNES: (Cont'g.)

16 Q. Let's start with Six P, can you  
17 identify what's in -- what's on Six P?

18 A. It is a letter that U.S. Customs and  
19 Border Protection sent to William Merlino dated September  
20 5th, 2018 in regards to acknowledging receipt of his  
21 petition in the above referenced case.

22 Q. Okay. And is Six P a physical letter  
23 that was recovered from the trash-pull that you and  
24 Special Agent Arcari did that day?

25 A. Yes.

1 Q. And is -- is Government's Exhibit Six  
2 on your screen, is that a fair and accurate picture of the  
3 -- of the letter that's at Six P?

4 A. Yes.

5 Q. And let's take a look at Seven P, can  
6 you tell the -- can you identify what's at Seven P?

7 A. It's an encapsulated pill.

8 Q. Okay. And was -- was that recovered  
9 from -- from the trash-pull?

10 A. Yes, it was.

11 THE COURT: Counsel, do you want to have  
12 the witness explain to the Jury what a trash-pull is in  
13 law enforcement terms?

14 MS. BURNES: Certainly, Your Honor.

15 BY MS. BURNES: (Cont'g.)

16 Q. Can you tell the Jury what a trash-  
17 pull is?

18 A. So basically, it's an investigative  
19 step in which once the -- once you go and put your trash  
20 on the curb, it's abandoned property. So investigators  
21 will go out in the morning before the trash trucks get it,  
22 pull the trash, take it to their office and go through it  
23 and you do it multiple times.

24 Q. Thank you. And does Government's  
25 Exhibit Seven, is that a photograph of the trash-pull that

1 -- that is Seven P?

2 A. That is correct.

3 MS. BURNES: The government moves admission  
4 of Six, Six P, Seven and Seven P.

5 MR. GAMBURG: No objection.

6 THE COURT: Admitted.

7 BY MS. BURNES: (Cont'g.)

8 Q. So let's take a look at Six P and if  
9 you just want to even hold the envelope --

10 A. Sure.

11 Q. -- for the -- for the Jury as well.

12 But directing your attention to the screen then what's --  
13 what's the date of -- of the letter in Government's  
14 Exhibit Six?

15 A. September 5th, 2018.

16 Q. Who is it addressed to?

17 A. William A. Merlino.

18 Q. And what -- what's contained in the --  
19 in the body of the letter?

20 A. This is to acknowledgement --  
21 acknowledged receipt of your petition in the above  
22 reference case, which was received in our office on August  
23 17th, 2018. The seizure case is currently under review,  
24 you will receive a response from our office once our  
25 review is completed and a decision has been rendered in

1           this case.

2                           Q.    And with respect to Government's  
3   Exhibit Seven P, if we can just hold that up for the Jury.  
4   And is that that capsule that you recovered --

5                           A.    Yes.

6                           Q.    -- from the trash-pull?

7                           MS. BURNES:  I have no further questions,  
8   Your Honor.

9                           MR. GAMBURG:  May I, Your Honor?

10                          THE COURT:  Of course.

11                          CROSS EXAMINATION

12                          BY MR. GAMBURG:

13                          Q.    So as I understand your testimony,  
14   this package was seized, correct, the two point one  
15   kilograms?

16                          A.    From Customs and Border Patrol?

17                          Q.    Yes.

18                          A.    Yes.

19                          Q.    All right.  And it was -- I call it  
20   D.N.P. because I can't pronounce it.  It was that 2,4  
21   D.N.P., correct?

22                          A.    It was the two point one kilograms of  
23   2,4-Dinitrophenol.

24                          Q.    You say it much better than me.  Okay.  
25   And then that notice was sent to 4630 Somers Point Road in

1 Mays Landing, New Jersey, correct?

2 A. Yes.

3 Q. And clearly it was received by Dr.  
4 Merlino because he wrote back requesting his items,  
5 correct?

6 A. Correct.

7 Q. All right. And not only did he  
8 request it, but he gave reasons why it shouldn't have been  
9 seized, correct?

10 A. Correct, he included attachments to  
11 his letter.

12 Q. Okay. And he also, in the body of his  
13 letter, spelled out why he believed that it shouldn't have  
14 been seized, correct?

15 A. Correct.

16 Q. All right. And then you wrote back to  
17 him -- well, not you, but your agency wrote back to him at  
18 4630 Somers Point Road because you found this letter in  
19 the trash, correct?

20 A. Correct.

21 Q. All right. And all the letter that  
22 you found in the trash was we acknowledged receipt of  
23 your petition trying to get your items back and we'll let  
24 you know how the investigation goes, right?

25 A. Correct.

1 MR. GAMBURG: That's all I have, Judge.

2 THE COURT: Anything further, Counsel?

3 MS. BURNES: No, Your Honor.

4 THE COURT: All right. The witness may  
5 step down, thank you.

6 MS. BURNES: The government calls Joan  
7 Nancy O'Brian.

8 THE COURT CLERK: Please raise your right  
9 hand. Do you swear or affirm the testimony you shall give  
10 to this court shall be the truth, the whole truth and  
11 nothing but the truth so help you God, or you do so  
12 affirm?

13 MS. O'BRIAN: I do.

14 WITNESS; JOAN NANCY O'BRIAN; Sworn

15 THE COURT CLERK: Thank you. Please state  
16 your name and spell it for the record?

17 THE WITNESS: My name is Joan N. O'Brian.

18 DIRECT EXAMINATION

19 BY MS. BURNES:

20 Q. Good morning, Ms. O'Brian.

21 A. Good morning.

22 Q. Can you tell the Jury your middle  
23 name?

24 A. Nancy.

25 Q. I'm going to ask you to speak into the

1 microphone.

2 A. Okay.

3 Q. Thank you.

4 A. Okay.

5 Q. And amongst friends and family, how do  
6 you identify yourself?

7 A. Nancy.

8 Q. If you were to fill out an official  
9 form, how do you identify yourself?

10 A. Joan N. O'Brian.

11 Q. What town do you live in, ma'am?

12 A. Right now I live in Florida.

13 Q. And prior to moving to Florida, where  
14 did you live?

15 A. In Mays Lading, New Jersey.

16 Q. Are you retired?

17 A. Yes, I am.

18 Q. And prior to retirement, where did you  
19 work?

20 A. At the Atlantic County Clerk's Office  
21 in Mays Landing.

22 Q. And before your job at the Atlantic  
23 County Clerk's Office in Mays Landing where did you work?

24 A. At SimCare?

25 Q. What is SimCare?

1 A. Family practice physician's office.

2 Q. Okay. And who was the physician that  
3 operated SimCare?

4 A. Dr. William Merlino.

5 Q. What were the circumstances of you  
6 leaving working for Dr. Merlino and SimCare?

7 A. He was retiring so I had -- I had to  
8 find a new job and move on.

9 Q. And approximately when was that?

10 A. September of 2005.

11 Q. So when you worked for Dr. Merlino and  
12 SimCare what was your job?

13 A. Physician's assistant, taking patients  
14 back, doing blood pressure.

15 Q. So when you left that job in September  
16 of 2005, you had a very different job at the Atlantic  
17 County --

18 A. Yes, I did.

19 Q. -- Clerk's Office?

20 A. Yes, I did.

21 Q. Okay. That was a career change?

22 A. Yes, it was.

23 Q. Ma'am, are you familiar with a  
24 chemical called D.N.P.?

25 A. No.



1 Q. Prior to being asked by investigators,  
2 had you ever heard of 2,4-Dinitrophenol?

3 A. No.

4 Q. Sitting here today, do you know  
5 anything about 2,4-Dinitrophenol?

6 A. No.

7 Q. Did you have any contact with Dr.  
8 Merlino since you left working for him in 2005?

9 A. No.

10 Q. Are you familiar with the post office  
11 service called Click-N-Ship?

12 A. Yes.

13 Q. And what's your understanding of what  
14 Click-N-Ship is?

15 A. You fill out labels, print them out,  
16 put them on packages.

17 Q. I want to direct your attention to  
18 what's been previously marked as Government's Exhibit  
19 Eight and we're going to move to the third page -- I'm  
20 sorry, the second page.

21 MS. BURNES: If we can enlarge that just  
22 for the very top line above the blue.

23 BY MS. BURNES: (Cont'g.)

24 Q. Ma'am, if I may approach, I'm also  
25 going to pull it up in your binder.

1 A. Okay.

2 Q. (unintelligible) on the page.

3 A. Okay.

4 Q. I'll represent to you that this --  
5 there's been testimony, this is a Click-N-Ship account  
6 ending in seven three six with the name Nancy O'Brian. Is  
7 that your account?

8 A. No.

9 Q. Do you have a Click-N-Ship account?

10 A. No.

11 Q. Do you recognize the words under the  
12 name Nancy O'Brian?

13 A. Yeah, that's the office -- medical  
14 office name.

15 Q. SimCare?

16 A. Yes, SimCare.

17 Q. Okay. And what about the address?

18 A. Yes.

19 Q. What do you recognize about that?

20 A. The office address.

21 Q. Did you open this account?

22 A. No.

23 Q. And did Dr. Merlino ever ask your  
24 permission to use your name on a Click-N-Ship account?

25 A. No.

1 Q. Did you set up this account for his  
2 office when you worked there?

3 A. No, I didn't.

4 Q. From 2005 to the present, have you  
5 shipped packages for Dr. Merlino?

6 A. No.

7 Q. And Ms. O'Brian, if you wanted to open  
8 a Click-N-Ship account in your name what name would you  
9 use?

10 A. My proper name, Joan N. O'Brian.

11 Q. When you moved from Mays Landing to  
12 Florida recently, did you fill out a change of address  
13 form?

14 A. Yes, I did.

15 Q. What form did you get -- what name did  
16 you give to the post office?

17 A. Joan N. O'Brian.

18 MS. BURNES: I have no further questions,  
19 Your Honor.

20 CROSS EXAMINATION

21 BY MR. GAMBURG:

22 Q. Hi.

23 A. Hi.

24 Q. Good morning.

25 A. Good morning.

1 Q. 4612 Somers Point Road, that was Dr.  
2 Merlino's office?

3 A. Yes.

4 Q. That's where you worked?

5 A. Yes.

6 Q. And that six zero nine number, I'm  
7 terrible with phone numbers, but does that seem to be the  
8 right number for the office?

9 A. Yes.

10 Q. Okay. And you left there in 2005 and  
11 went to the Atlantic County Clerk's Office, right?

12 A. Yes.

13 Q. Do you still see Dr. Merlino from time  
14 to time?

15 A. I haven't seen him in a while now.

16 Q. From '05 to '18 while you're in the  
17 clerk's office?

18 A. I saw him once when he came into the  
19 office.

20 Q. Okay. Your relationship was still  
21 cordial?

22 A. Yes.

23 Q. Thank you.

24 MR. GAMBURG: That's all I have, Judge.

25 MS. BURNES: Nothing further from the

1 government, Your Honor.

2 THE COURT: All right. Ma'am, you may step  
3 down.

4 THE WITNESS: Thank you.

5 MS. BURNES: You Honor, the government's  
6 next witness is Special Agent Bryan Arcari, there are  
7 matters in his testimony that have been the subject of  
8 stipulation by the parties. With the Court's permission,  
9 the government would read the stipulations into evidence  
10 prior to that testimony?

11 THE COURT: That's fine. You'll remember  
12 ladies and gentlemen, in my introductory instructions I  
13 talked about sometimes the parties just get together and  
14 would agree on certain facts. And then we don't need to  
15 have testimony or other evidence.

16 And so you're about to hear a stipulation  
17 where the government and the defense have agreed the  
18 following facts are true.

19 MS. BURNES: The first stipulation is  
20 stipulation chain of custody. It is hereby stipulated by  
21 and between the United States, by its Attorneys Jacqueline  
22 Romero, United States Attorney in and for the Eastern  
23 District of Pennsylvania and Joan E. Burnes, Assistant  
24 United States Attorney for the District and Defendant  
25 William A. Merlino and his attorney, Robert Gamburg, Esq.

1       that the following facts are true and correct and may be  
2       entered into the record of the trial of this case without  
3       further proof.

4               The first stipulation is chain of custody  
5       from -- from the time each of the government's exhibits  
6       came into the government's possession, through the time of  
7       their introduction in evidence. A proper and acceptable  
8       chain of custody was maintained, and the exhibits were not  
9       altered or tampered with or modified in any way.

10              The next stipulation is with respect to  
11       laboratory reports. The stipulation is that the  
12       substances seized during the course of this investigation  
13       by the F.D.A. O.C.I. was submitted to United States Food  
14       and Drug Administration forensic chemistry center for the  
15       -- for analysis.

16              The lab identified the type of substance  
17       detected in the item submitted for analysis, the lab  
18       reports listed as government exhibits, including the  
19       results and conclusions they're in are accurate and shall  
20       be admitted into evidence without the testimony of the  
21       individuals who conducted the testing. And there's a list  
22       of five lab reports that will be the subject of testimony  
23       during Special Agent Arcari's testimony.

24              The next stipulation is authentication and  
25       regularly conducted business activity. The parties

1 stipulated that documents obtained from the following  
2 entities may be admitted as authentic business records at  
3 trial without the testimony of a document custodian.

4 As such documents are duplicate copies of  
5 domestic business records were made at or near the time of  
6 the occurrence of the matters set forth by or by  
7 information transmitted by a person with knowledge, they  
8 were kept in the course of regularly conducted activity  
9 and the records were made by the regularly conducted  
10 business activity.

11 So the business records that is the subject  
12 of the stipulation are eBay Inc. Click-N-Ship, Google  
13 L.L.C., PayPal Holdings Inc., Shore Medical Center, Y Max  
14 phone records and the United States Customs and Border  
15 Protection.

16 And the last stipulation is a stipulation  
17 to the testimony of a witness that if called to testify,  
18 Steven Knapman (phonetic spelling) would testify that the  
19 four documents listed in the stipulation are true and  
20 correct copies of emails, and the emails between Jack  
21 Knapman and dnp@SimCare.com they're listed further in the  
22 stipulation, and they will be identified during the course  
23 of Special Agent Arcari's testimony.

24 THE COURT: All right, thank you, Counsel.  
25 At some point just to provide written copies to the Court

1 for the record, when -- whenever it's convenient.

2 MS. BURNES: Okay. Thank you, Your Honor.

3 THE COURT: So members of the Jury we have  
4 a document and the document comes from somewhere, in order  
5 to show that it came from that place we ordinarily call  
6 witnesses and they say yeah, this was our document, this  
7 was on our files, we received this, we kept it, et cetera.

8 What we've now done is eliminated all that  
9 by having a stipulation that if we bothered to call those  
10 individuals who had custody of those documents they would  
11 say yes, these are the documents, all right, that's where  
12 we are.

13 MS. BURNES: And with the Court's  
14 permission, I can hand out the originals, I made a copy  
15 for counsel.

16 THE COURT: That's fine, thank you. You  
17 can just lay on the counter there and they will be  
18 incorporated in due course.

19 MS. BURNES: Your Honor, the government's  
20 next witness is Special Agent Bryan Arcari.

21 THE COURT: All right. You may proceed.

22 MS. BURNES: Yeah.

23 THE COURT CLERK: Please raise your right  
24 hand. Do you swear or affirm that the testimony you shall  
25 give to this court shall be the truth, the whole truth and



1 nothing but the truth so help you God?

2 MS. ARCARI: I do.

3 WITNESS; BRYAN ARCARI; Sworn

4 THE COURT CLERK: Thank you. You may be  
5 seated. Please state and spell your full name for the  
6 record.

7 THE WITNESS: Yes. Full name is Bryan  
8 Arcari, B-R-Y-A-N A-R-C-A-R-I.

9 DIRECT EXAMINATION

10 BY MS. BURNES:

11 Q. Good morning, Special Agent Arcari.

12 A. Good morning.

13 Q. Can you tell the Jury how you are  
14 employed please?

15 A. Sure. I am a special agent with the  
16 Food and Drug Administration's office of criminal  
17 investigation.

18 Q. And tell the Jury how long you've been  
19 with F.D.A. O.C.I.?

20 A. I've been a special agent for eight-  
21 and-a-half years.

22 Q. What kinds of work do you do as a  
23 special agent?

24 A. We're tasked with investigating any  
25 violations of the Food, Drug and Cosmetic Act.

1 Q. And generally speaking, what's the  
2 Food, Drug and Cosmetic Act that you investigate?

3 A. Basically anything. I've worked cases  
4 where counterfeit drugs, protecting the supply chain of  
5 pharmaceutical drugs, tainting and adulterated food,  
6 basically any food or drug matter.

7 Q. And directing your attention then to  
8 the investigation of William Merlino, and I'll direct your  
9 attention to the summer of 2018. Did the F.D.A. office of  
10 criminal investigations receive information in the summer  
11 of 2018 regarding D.N.P. sales?

12 A. Yes. Summer of 2018 we received  
13 information from the United Kingdom like their F.D.A.  
14 version, our counterparts there that a individual is  
15 selling D.N.P. on eBay with the username SimCare.

16 Q. And you mentioned your counterpart in  
17 the U.K., is that the National Food Crime Unit Food  
18 Standards Agency?

19 A. Yes, it is.

20 Q. And who was the eBay user that was the  
21 subject of the investigation?

22 A. The eBay user was SimCare.

23 Q. And the -- who's the individual that  
24 was identified as eBay user SimCare?

25 A. The individual identified was William

1 Merlino, and the address was listed on there as well, 4630  
2 Somers Point Road, Mays Landing, New Jersey.

3 Q. And is that why the case was referred  
4 to -- to you and your office?

5 A. Correct. South Jersey is covered  
6 under our office.

7 Q. Now, upon receiving this information  
8 during the course of your investigation, did you do open  
9 source internet searches for William Merlino and SimCare?

10 A. Yes, I did.

11 Q. So I want to direct your attention to  
12 Government's Exhibit One just for the parties. Can you  
13 tell the Jury what's on Government's One?

14 A. Yes, this is a Twitter page, it was a  
15 screen cap -- screen capture by me. It is an account in  
16 the name of Bill Merlino with a user named Dr. Bill.

17 Q. Okay. And let's take a look at  
18 Government's Exhibit Two. What is Government's Exhibit  
19 Two?

20 A. Exhibit Two is a -- again a screen  
21 capture by me just doing an open source search of SimCare  
22 and D.N.P.

23 Q. Okay. And do Government's Exhibit One  
24 and Two fairly and accurately depict the screen captures  
25 that you made during the course of your investigation?

1 A. Yes.

2 MS. BURNES: The government moves admission  
3 of Government's One and Two?

4 MR. GAMBURG: No objection, Judge.

5 THE COURT: Admitted.

6 MS. BURNES: And if I may publish  
7 Government's One to the Jury, please?

8 BY MS. BURNES: (Cont'g.)

9 Q. So let's take a look at the top of  
10 Government's One starting on the left-hand side. Can you  
11 identify the Twitter account that's depicted in  
12 Government's One?

13 A. Yes, you see a picture of William  
14 Merlino with the name Bill Merlino underneath and the  
15 Twitter username @drbill.

16 Q. Okay. And let's take a look then  
17 panning to the -- to the right, is that a tweet directing  
18 your attention to January 3rd of 2018?

19 A. Yes.

20 Q. Let's take a look at that. What's the  
21 -- the tweet of January 3rd?

22 A. It says D.N.P. available on eBay for  
23 weight loss, it is not legal in the U.S. so listed as a  
24 fertilizer on eBay hashtag diet hashtag weight loss.

25 Q. Okay. Let's take a look at

1 Government's Two.

2 MS. BURNES: And if we can enlarge the top  
3 part of -- of that screen.

4 BY MS. BURNES: (Cont'g.)

5 Q. Okay. Can you tell the Jury what's  
6 depicted in Government's Two?

7 A. Here's the listing on eBay for forty  
8 D.N.P. capsules for agriculture -- agricultural use, one  
9 hundred and twenty-five milligrams each.

10 Q. And can you tell the Jury what is  
11 eBay?

12 A. eBay is a online marketplace where  
13 sellers can put up items for sale.

14 Q. So let's take a look, who is the  
15 seller identified on Government's Exhibit Two?

16 A. The seller here is listed as SimCare.

17 Q. And on the left-hand side, what's --  
18 what's depicted?

19 A. White and red capsules.

20 Q. Okay. Now the -- the top yellow  
21 banner says that the listing was -- was ended, can you --  
22 can you describe what that means in this circumstance?

23 A. Sure. When I did the search on the  
24 internet, it was just an old listing that was dated  
25 February 3rd, 2018. It was -- you could still see it when

1           you Google it.

2                       Q.    Okay.  And so the -- the -- this sale  
3           ended on February 3rd, 2018.  Is that right?

4                       A.    That's correct.

5                       Q.    Okay.  And -- and you describe what  
6           the name of the seller is, let's take a look at the bottom  
7           of Government's Exhibit Two, and what's depicted there?

8                       A.    This would have been a description  
9           listed with the item for sale.

10                      Q.    And how was the item described?

11                      A.    It is listed as a plant fertilizer and  
12           growth regulator similar to a rooting hormone, pure yellow  
13           crystalline powder, 2,4-Dinitrophenol, one hundred twenty-  
14           five milligram capsules, dry weight, not for human  
15           consumption.

16                      Q.    Okay.  And there was a statement made  
17           there in where -- was it blue and red in the original?

18                      A.    Yes.

19                      Q.    Okay.  So let's take a look at the red  
20           statement.

21                      A.    As a retired physician, I have used  
22           D.N.P. for patients when it was legal and discovered that  
23           its mechanism of action worked on plants to slow growth.  
24           The capsules are in the second picture.

25                      Q.    And then let's take a look at the --

1 at the next -- at the next blue section.

2 A. D.N.P. is shipped from the  
3 manufacturer with ten percent water for safety, bulk  
4 shipping. In order to assure accurate unit weight, all  
5 powder is dried before encapsulation by a pharmacist.

6 Q. And what's the final statement on this  
7 page?

8 A. I will be glad to answer any questions  
9 you might have regarding D.N.P., its uses, handling and  
10 safety.

11 Q. Okay.

12 MS. BURNES: We can take that down. Thank  
13 you, Mr. Conroy.

14 BY MS. BURNES: (Cont'g.)

15 Q. I want to direct your attention to  
16 August of 2018, did you do an undercover purchase of  
17 D.N.P. from eBay user SimCare?

18 A. Yes, I did.

19 Q. And prior to getting the details of  
20 that transaction, can you tell the Jury how you used eBay  
21 in that circumstance?

22 A. So with any online things you have to  
23 create a user account, so I created a user account with my  
24 undercover identity, and then added the purchasing  
25 information as far as PayPal and credit -- and credit

1 card.

2 Q. Okay. And during the course of the  
3 investigation, did you get certified copies of business  
4 records from eBay for user SimCare?

5 A. Yes, I did.

6 Q. Okay. So let's -- I want to direct  
7 your attention to Government's Nine, for the parties only.  
8 Can you describe generally what is Government's Nine. Do  
9 you recognize that?

10 A. Yes, I do.

11 Q. And what is it?

12 A. It's a cover page that eBay provided  
13 along with the actual data of transactions, but just  
14 spells out the registration information.

15 Q. Okay. And on the pages behind  
16 Government's Nine, did you create summary charts of all of  
17 the data from the transaction?

18 A. Yes, I did.

19 MS. BURNES: The government moves  
20 Government's Exhibit Nine into evidence?

21 MR. GAMBURG: No objection, Your Honor.

22 THE COURT: Admitted.

23 MS. BURNES: And if we can publish it for  
24 the Jury.

25 BY MS. BURNES: (Cont'g.)



1 Q. So if we can just take a look at the  
2 registration information, who is this account registered  
3 to?

4 A. William Merlino.

5 Q. And at the time of your receipt of the  
6 record, what was SimCare's eBay status?

7 A. It was suspended.

8 Q. Okay. So directing your attention to  
9 the next page of Government's Nine, what's depicted here?

10 A. Just a summary of the -- that initial  
11 cover page.

12 Q. Okay. So with respect to eBay user  
13 I.D. SimCare, who is it registered to?

14 A. William A. Merlino.

15 Q. And what's the email associated with  
16 the account?

17 A. merlin@acm.org.

18 Q. And when was the account registered?

19 A. December 10th, 1998.

20 Q. Let's take a look at the next page,  
21 can you tell the Jury what's depicted here?

22 A. Yes, this is a summary of the analysis  
23 I did regarding transactions of D.N.P. by the user I.D.  
24 SimCare.

25 Q. Okay. So can -- can you tell the Jury

1           what you did, you had the eBay records for SimCare, how  
2           did you search for transactions to include in your  
3           summary?

4                   A.    So each transaction listed price, the  
5           user who purchased it and listed the item for sale. So it  
6           was pretty easy to distinguish what was D.N.P. and what  
7           was something else.

8                   Q.    Okay. So let's take a look at the --  
9           look at the -- the chart, what's the picture on this chart  
10          here?

11                  A.    It's a monthly breakdown of the eBay  
12          sells.

13                  Q.    Okay. So November of 2017, how many  
14          eBay sales did SimCare make for D.N.P. sales?

15                  A.    Twelve.

16                  Q.    And for December 2017?

17                  A.    Twenty-nine.

18                  Q.    January of 2018?

19                  A.    Seventy-seven.

20                  Q.    Okay. Was that the same month as the  
21          tweets?

22                  A.    Yes, it was.

23                  Q.    February of 2018?

24                  A.    Forty-five.

25                  Q.    And that's -- that's the month of the

1 ad that -- that is Government's Exhibit Two. Is that  
2 right?

3 A. That's correct.

4 Q. Let's take a look at March of 2018?

5 A. Sixty-two.

6 Q. And moving forward then, July of 2018  
7 how many eBay sales were there?

8 A. Zero.

9 Q. And was -- was that when the petition  
10 went from Customs and Border Patrol, the notice of seizure  
11 to Defendant Merlino?

12 A. Yes.

13 Q. And take a look at August of 2018 how  
14 many sales were there?

15 A. Fourteen.

16 Q. What happened in August of 2018 with  
17 respect to eBay sales of D.N.P. in the United States?

18 A. eBay got wise to what was going on and  
19 totally banned D.N.P. for sale on their website.

20 Q. Okay. And had they taken that action  
21 earlier with respect to U.K. customers?

22 A. Yes.

23 Q. So how many total sales of D.N.P. on  
24 eBay did you identify for SimCare from November 2017 to  
25 August 2018?

1 A. Three hundred seventy-eight.

2 Q. Okay. Let's take a look at the next  
3 page, what's the earliest identified transaction that you  
4 identified with D.N.P.?

5 A. November 9th, 2017.

6 Q. Okay. And directing your attention to  
7 the right side of the page, the eBay listing title. Tell  
8 the Jury what's depicted there?

9 A. D.N.P., agriculture use, forty  
10 capsules, two hundred milligrams each, no additives.

11 Q. Okay. And are those the descriptors  
12 that you used to -- to populate the summary charts?

13 A. Yes.

14 Q. Okay. And so just going through the -  
15 - each of these charts, the first column depicts a  
16 purchase date, what's depicted in the second column?

17 A. The second is the buyer's user I.D.

18 Q. So just like a seller has an I.D. like  
19 SimCare, does a buyer also have a user I.D.?

20 A. That is correct.

21 Q. And then the quantity purchased, where  
22 did that information come from?

23 A. eBay.

24 Q. Okay. And the eBay listing title came  
25 from eBay. Is that correct?

1 A. That is correct.

2 Q. So let's take a look at the next page,  
3 I want to direct your attention to December of 2017 and  
4 addressing December 13th of 2017. Is there a D.N.P.  
5 transaction identified in your chart?

6 A. Yes, it was a purchase by the user  
7 I.D. Freeks (phonetic spelling) 2015.

8 Q. And what was the purchase for?

9 A. It was a quantity of one D.N.P.,  
10 agriculture use, one hundred capsules, two hundred  
11 milligrams each, one hundred percent no additives.

12 Q. Okay. Moving forward let's take a  
13 look at February 2018. On February 2nd of 2018 is there a  
14 transaction to 2014-K-N-A-P-M?

15 A. Yes, there is.

16 Q. Okay. And does that correspond to the  
17 shipping records identified in this case to Jack Knapman  
18 in the U.K.?

19 A. Yes, it does.

20 Q. And moving forward to March of 2018 --  
21 I'm sorry, yeah, March of 2018 -- March 13th of 2018. So  
22 another transaction on March 13th, 2018 with that same  
23 user 2014-K-N-A-P-M?

24 A. Yes, there is.

25 Q. And what was that purchase for?

1                   A.    Two hundred DNP capsules, agriculture  
2                   use, two hundred milligrams each.

3                   Q.    Moving forward to March 25th of that  
4                   same month, so transaction with M-C-L-Y-N-D?

5                   A.    Yes, there is.

6                   Q.    And what is that transaction for?

7                   A.    One hundred D.N.P. crystalline  
8                   capsules for agriculture use, two hundred milligrams each.

9                   Q.    And directing your attention to the  
10                  following page for April. We've looked at a number of  
11                  transactions for D.N.P. capsules for agricultural use.  
12                  Directing your attention to April 26th of 2018 what is the  
13                  description of the product for sale by SimCare?

14                  A.    D.N.P. fertilizer, potted plants,  
15                  fifty by two hundred.

16                  Q.    Okay. And is that replicated several  
17                  times in your chart?

18                  A.    Yes, it is.

19                  Q.    Let's take a look at the following  
20                  page, May of 2018, May 13th of 2018. With respect to  
21                  these sales, what is the eBay listing title for the sale?

22                  A.    It's D.N.P. 2,4 powder twenty thousand  
23                  milligrams encapsulated on request.

24                  Q.    Okay. And does the statement  
25                  encapsulated on request with respect to the sales of the

1 D.N.P. Does that appear throughout the transaction  
2 following?

3 A. Yes, it does.

4 Q. Moving forward to June of 2018, June  
5 2nd of 2018. Is that another transaction with M-C-L-Y-N-  
6 D-B?

7 A. Yes, there is.

8 Q. Okay. And what's that transaction  
9 for?

10 A. D.N.P. power packs, twenty thousand  
11 milligrams, one hundred by two hundred.

12 Q. And what does one hundred by two  
13 hundred mean?

14 A. One hundred capsules at two hundred  
15 milligrams a piece.

16 Q. And moving forward --?

17 THE COURT: And pick a time for the mid-  
18 morning break that's convenient, it could be now or a  
19 couple of minutes whatever works.

20 MS. BURNES: Okay, thank you.

21 BY MS. BURNES: (Cont'g.)

22 Q. Let's take a look at July of 2018,  
23 this is the month of the C.B.P. seizure notice, how many  
24 transactions were there?

25 A. Zero.

1 Q. And finally, let's take a look at  
2 August of 2018. I want to direct your attention to August  
3 28th of 2018 there was a username B-Y-R-P-A dash 77. Do  
4 you recognize that username?

5 A. I do.

6 Q. And what is that username?

7 A. That is my undercover buyer user I.D.

8 Q. And is this the transaction that you  
9 completed as your first U.C. buy in this case?

10 A. Yes, it was.

11 MS. BURNES: Okay. Your Honor, if it --

12 THE COURT: All right.

13 MS. BURNES: -- if the Court -- we can take  
14 a break.

15 THE COURT: Good. All right. Ladies and  
16 gentlemen as I said, we work for about an hour-and-a-half  
17 and we take a mid-morning break, so we'll do that now.  
18 And we'll try to get back to work in about ten minutes and  
19 Mr. Henry magically appears. All right. We're adjourned.

20 (Off the record, 10:59:59 to 11:11:36)

21 THE COURT CLERK: The Court is in session.

22 THE COURT: Special Agent Arcari, can you  
23 take the stand while --.

24 THE COURT CLERK: All rise.

25 THE COURT: All right. We can continue.



1 MS. BURNES: Thank you, Your Honor.

2 BY MS. BURNES: (Cont'g.)

3 Q. Special Agent Arcari, before the  
4 break, we were taking you up to your first undercover  
5 purchase on the eBay records. So I want to direct your  
6 attention to August of 28th of 2018, can you tell the Jury  
7 what investigative steps you took in this case? With your  
8 first U.C. --

9 A. U.C. buy.

10 Q. -- with first U.C. buy.

11 A. So, as I've explained before, using my  
12 undercover eBay user I.D., I purchased D.N.P. from SimCare  
13 then it was shipped to my undercover address.

14 Q. Okay. So for identification only,  
15 let's take a look at Government's Exhibits Twenty-one,  
16 Twenty-two, Twenty-three and Twenty-four. And if you want  
17 to open the binder, so you can just look at all four of  
18 them while Mr. Conway's on the first one.

19 Government's Exhibits Twenty-one through  
20 Twenty-four, your undercover Gmail address that contains  
21 receipts and purchases related to that first undercover  
22 buy?

23 A. That is correct. Just --.

24 Q. Can you just describe what that means?

25 A. Sure. Just like any purchase you've

1 done online, the vendor will usually send you a receipt by  
2 email. And what I have here is PayPal acknowledgement  
3 that I made a purchase from SimCare.

4 Q. Government's Twenty-two, what's  
5 depicted there?

6 A. Government Twenty-two is the order  
7 confirmation from eBay. Titled D.N.P. fifteen grams Sim.

8 Q. What about Government's Twenty-three?

9 A. Twenty-three is an invoice I received  
10 from SimCare Associates. And in this one, it was a charge  
11 for encapsulating the D.N.P. that I purchased from eBay.

12 Q. And Government's Twenty-four.

13 A. Twenty-four is an email confirmation  
14 to my Gmail account from the U.S. Postal Service with the  
15 Click-N-Ship information, my tracking number.

16 Q. And so Government's Twenty-one through  
17 Twenty-four, are they fair and accurate copies of your  
18 undercover Gmail account documenting steps in your  
19 undercover buy?

20 A. Yes, they are.

21 MS. BURNES: The government seeks admission  
22 of Government's Exhibit Twenty-one through Twenty-four.

23 MR. GAMBURG: No objection.

24 THE COURT: Admitted.

25 MS. BURNES: And if we can publish Twenty-

1 two please, Mr. Conway.

2 BY MS. BURNES: (Cont'g.)

3 Q. So can you tell the Jury what's

4 depicted on Government's Twenty-two?

5 A. Sure, like I said it's the order  
6 confirmation that I received from eBay to my undercover  
7 Gmail account, titled D.N.P. fifteen grams Sim.

8 Q. So directing your attention to the top  
9 of the page order confirmed D.N.P. fifteen grams Sim. Is  
10 that right?

11 A. That's correct.

12 Q. Okay. At the middle of the page, the  
13 bottom of the screen here, what's -- what's depicted?

14 A. The listing, D.N.P. fifteen grams Sim,  
15 total amount thirty-three dollars.

16 Q. Okay. So let's take a look at the --  
17 at Government's Exhibit Twenty-one. And if we take a look  
18 at the top of the page, can you just tell the Jury what's  
19 depicted at the top of Government's Twenty-one?

20 A. Sure. It's Gmail from PayPal with the  
21 subject line, your payment receipt to SimCare, Associates  
22 C.H.T.

23 Q. Okay. And this email is to Bryan and  
24 that's redacted. That's your undercover receipt for  
25 purchases?

1 A. That's correct.

2 Q. In this case, okay. And what's the  
3 date of this email?

4 A. The date is August 28th, 2018.

5 Q. And as depicted on the screen, what's  
6 depicted on the middle of the email?

7 A. Thank you -- thanks for using PayPal.

8 Q. Okay. And -- and how much did you pay  
9 via PayPal?

10 A. I see, sorry. It was thirty-three  
11 dollars, you paid thirty-three dollars, U.S. dollars on  
12 eBay.

13 Q. Okay. So let's take a look at -- at  
14 Government's Twenty-three. And starting at the top of the  
15 screen, can you tell the Jury what's depicted here?

16 A. Yes, it was an email to my undercover  
17 Gmail account from SimCare Associates Chartered. And it  
18 was an invoice for the encapsulation of the D.N.P.

19 Q. And what's the date of this?

20 A. The date is August 29th, 2018.

21 Q. So after you placed the order and got  
22 -- and got the -- the -- the invoice and payment, did you  
23 receive a direct communication with the seller?

24 A. Yes, that's correct. I received an  
25 email.

1 Q. Okay. And -- and as we get to that,  
2 let's take a look at Government's Twenty-four. What's  
3 depicted in Government's Twenty-four?

4 A. Twenty-four is the email from U.S.P.S.  
5 to my undercover Gmail account. Just stating that my  
6 package has been shipped.

7 Q. Okay. What's the date of the Click-N-  
8 Ship notice, this email?

9 A. That is August 30th, 2018.

10 Q. And what are the Click-N-Ship shipping  
11 details depicted here?

12 A. It's listed, shipped from SimCare  
13 Associates Limited, 4630 Catawba Avenue, Mays Landing, New  
14 Jersey 08330.

15 Q. And it was shipped to you at your  
16 undercover email address? I mean, post office address?

17 A. Yes, it was.

18 Q. Okay. And is that address, it's shown  
19 here on -- on -- in Springfield, Pennsylvania. Is that in  
20 the Eastern District of Pennsylvania?

21 A. Yes, it is.

22 Q. And did you do subsequent purchases  
23 that were shipped into the Eastern District of  
24 Pennsylvania?

25 A. Yes, I did.

1 Q. Okay. So after you've placed the  
2 order and got the invoice, you received a direct  
3 communication with the seller. Is that right?

4 A. That's correct.

5 Q. Let's take a look for identification  
6 only at Government's Twenty-five. And do you recognize  
7 Government's Twenty-five?

8 A. Yes, I do.

9 Q. What is it?

10 A. It's an email from simcare@gmail to my  
11 undercover Gmail account.

12 Q. And does Government's Twenty-five  
13 contain a thread of -- of emails between your Gmail  
14 account and simcare@gmail.com?

15 A. Yes, it does. There's several emails  
16 back and forth.

17 Q. Was there a first -- on the -- on the  
18 first email, is there a P.D.F. attached to that email?

19 A. Yes, there is.

20 Q. And I want to direct your attention to  
21 Government's Twenty-six, what's depicted there?

22 A. Twenty-six is like a letter that was  
23 an attachment to that email.

24 Q. Okay. So Twenty-six is the printout  
25 to the -- to the P.D.F. that's depicted on Twenty-five?

1 A. That's correct.

2 Q. Okay.

3 MS. BURNES: The Government moves  
4 Government's Exhibit Twenty-five and Twenty-six into  
5 evidence.

6 MR. GAMBURG: No objection.

7 THE COURT: Admitted.

8 MS. BURNES: And if we may publish Twenty-  
9 five, please.

10 BY MS. BURNES: (Cont'g.)

11 Q. So if -- if we can -- if we can take  
12 the -- the top of the page and enlarge it and Special  
13 Agent Arcari, if you could tell the Jury what's depicted  
14 here on this Gmail thread?

15 A. Sure. So the initial email came  
16 Tuesday, August 28th, 2018 from simcare@gmail to my  
17 undercover Gmail account with the subject line, D.N.P.  
18 fifteen grams. And the user at simcare@gmail.com asking  
19 me if I wanted capsules and that it would be twenty-five  
20 dollars for one hundred or just ship the powder.

21 Q. Okay. And was this communication  
22 received after you made the thirty-three dollar purchase  
23 in response to the eBay app?

24 A. Yes, it was.

25 Q. Okay. And let's -- let's take a look

1 at the -- the next -- the next communication in the  
2 thread, how did you respond?

3 A. I responded, sweet. I'll take the  
4 caps. I wouldn't even know how to do that. Thanks.

5 Q. And what response did you get on  
6 Wednesday, August 29th or shortly after you -- your  
7 message to SimCare?

8 A. I received an email back from  
9 simcare@gmail.com. Will send bill via square.com. B-T-W,  
10 by the way, eBay pulled the D.N.P. listing, can order  
11 directly via this email address. And it's signed Bill.

12 Q. Okay. And in fact, was that  
13 consistent with your knowledge that eBay had pulled all  
14 D.N.P. sales from the website?

15 A. Yes, that's correct.

16 Q. In fact, were you able to capture,  
17 screen capture, the eBay purchase that you've made?

18 A. No, I was not.

19 Q. Okay. So let's take a look at the  
20 bottom of the page continuing, I'm sorry, before you go to  
21 that part of the thread, let's -- let's take a look at  
22 Government's Exhibit Twenty-six. Now, your initial email  
23 from SimCare contained a PDF attachment. Is that right?

24 A. That's correct.

25 Q. Can you tell the Jury what's depicted



1 in Government's Twenty-six?

2 A. Sure. It's basically an advertisement  
3 for direct sales. Just email at SimCare or  
4 simcare@gmail.com for any future purchases.

5 Q. And what -- what is the P.D.F. that  
6 was sent to you by SimCare, what does it say? Let's start  
7 at the top.

8 A. Sure. It says D.N.P. now available on  
9 eBay. Thank you for your D.N.P. interest or order. U.S.  
10 and international regulators have pulled listings on eBay  
11 several times. Powder may be ordered on eBay at this time  
12 and if desired sent to a third party for encapsulation.  
13 They will bill twenty-five dollars for the one hundred  
14 capsules of any strength.

15 Q. And then the section in -- was this in  
16 red and blue on the original?

17 A. Yes.

18 Q. Okay. And what does it say there?

19 A. You can also order directly from  
20 simcare@gmail.com and be sent an invoice via square.com.

21 Q. And let's take a look at the -- at the  
22 -- at the bottom of the page what are the purchase options  
23 available?

24 A. Following purchase options available  
25 on eBay, ten grams, eighteen dollars and ninety-nine

1           cents, no capsule option. Fifteen grams twenty-eight  
2           dollars, one hundred capsules one hundred fifty  
3           milligrams, twenty-five grams forty-eight dollars, one  
4           hundred capsules two hundred and fifty milligram and three  
5           hundred fifty gram or thirty-five gram for sixty-eight  
6           dollars, one hundred capsules three hundred fifty  
7           milligrams.

8                       Q.    Okay. So let's go back to  
9           Government's Twenty-five. After you communicated with  
10          Bill, simcare@gmail.com for encapsulation, did you have --  
11          did you receive the package?

12                     A.    Yes, I did.

13                     Q.    Okay. So let's -- let's take a look  
14          at for identification only Government's Exhibits Twenty-  
15          seven through Twenty-nine.

16                     MS. BURNES: And Mr. Conway, you can stay  
17          on twenty-seven, if you just want to flip to the book.

18                     BY MS. BURNES: (Cont'g.)

19                     Q.    Government's Exhibit Twenty-seven,  
20          what's depicted here for identification?

21                     A.    It is a small Ziploc type baggie  
22          containing red and white capsules.

23                     Q.    Okay. And the Government's Exhibit  
24          Twenty-eight.

25                     A.    It's the same thing.

1 Q. Okay. And does this one have a  
2 picture of a label?

3 A. Yes, they all contain a label.

4 Q. And Government's Exhibit Twenty-nine.  
5 Twenty-nine is already in evidence. Government's Exhibit  
6 Twenty-seven and Twenty-eight, pictures of the U.C.  
7 purchase received in Springfield, Pennsylvania?

8 A. That's correct.

9 Q. And I'm going to approach with  
10 Government's Exhibit Twenty-eight P in addition to Twenty-  
11 nine P. And can you just identify Government's Exhibit  
12 Twenty-eight P?

13 A. Sure, Twenty-eight P is the bag that  
14 contains the capsules.

15 MS. BURNES: The Government moves  
16 Government's Twenty-seven and Government's Twenty-eight  
17 and Twenty-eight P into evidence.

18 MR. GAMBURG: No objection.

19 THE COURT: Admitted.

20 MS. BURNES: If we can take a look, Mr.  
21 Conway at Government's Twenty-seven.

22 BY MS. BURNES: (Cont'g.)

23 Q. Special Agent Arcari, if you can just  
24 hold up to the Jury Twenty-nine P, it's already in  
25 evidence. And sort of explain what it is you received

1           when you went to retrieve your parcel.

2                   A.    So like I said, after the purchase, I  
3           went to our undercover address to receive this parcel. So  
4           at the time, it was a envelope, with a Click-N-Ship label  
5           addressed to my undercover identity and undercover  
6           address.

7                   And the sender name was SimCare Associated  
8           L-T-D, 4630 Catawba Avenue, Mays Landing, New Jersey.

9                   Q.    And in the envelope that is Twenty-  
10          eight, Twenty-nine P. Can you describe what's Twenty-  
11          eight P?

12                  A.    So within that envelope was a baggie  
13          filled with red and white capsules.

14                  Q.    Okay. So the capsules depicted on  
15          Twenty-seven -- Government's Twenty-seven?

16                  A.    Yes.

17                  Q.    Okay. And the capsules were in the  
18          baggie that you're holding in your hand?

19                  A.    That's correct.

20                  Q.    Twenty-eight P, is that right?

21                  A.    That's correct.

22                  Q.    Okay. So let's take a look at  
23          Government's Twenty-eight. With respect to the capsules,  
24          what's depicted on the label here?

25                  A.    On the label, it lists 2,4-

1 Dinitrophenol, two hundred milligrams, one hundred thirty-  
2 three milligram dry weight, expires 12/01/2020, not for  
3 human consumption.

4 Q. And were -- were the -- was the  
5 package sent to the F.C.C. lab for analysis?

6 A. Yes, it was.

7 Q. And what was the result of that in  
8 that analysis?

9 A. Results came back that it was D.N.P.  
10 contained in those capsules.

11 Q. Now, with respect to this first  
12 purchase, you used PayPal in the transaction. Is that  
13 right?

14 A. That's correct.

15 Q. During the course of the  
16 investigation, did you get certified copies of business  
17 records from PayPal for William Merlino?

18 A. Yes, I did.

19 Q. Let's take a look at Government's  
20 Exhibit Ten for identification only. And if you want to  
21 just look at the hardcopy for a moment, Special Agent  
22 Arcari, what's -- what's depicted in Government's Exhibit  
23 Ten?

24 A. Sure. It's the cover page from PayPal  
25 that was included with the actual data, listing

1 registration information.

2 Q. And the follow-up pages of  
3 Government's Ten, what's contained there?

4 A. Just more registration information but  
5 listing telephone numbers, email addresses and actual  
6 physical addresses.

7 Q. And did you also receive several  
8 hundred lines of data depicting PayPal information?

9 A. Yes, I did.

10 Q. Okay.

11 MS. BURNES: And the Government moves  
12 Government Exhibit Ten.

13 MR. GAMBURG: No objection, Your Honor.

14 THE COURT: Admitted.

15 MS. BURNES: If we can publish the first  
16 page of Government's Ten.

17 BY MS. BURNES: (Cont'g.)

18 Q. So let's take a look at the  
19 registration information box. This -- who is the -- the  
20 first and last name, username, for this PayPal account.

21 A. It's William Merlino.

22 Q. And what's the email address?

23 A. simcare@gmail.com.

24 Q. And what's the business name  
25 associated with this account?

1 A. Agro Fortis Supply.

2 Q. Okay. Directing your attention to the  
3 second page of Government's Ten. Can you tell the Jury  
4 what's depicted here?

5 A. You have telephone numbers associated  
6 with the account, as well as physical addresses associated  
7 with the account.

8 Q. Okay. And at the very top of the page  
9 is an email address associated with the account?

10 A. Yes, there is. It's --.

11 Q. And what's the email address?

12 A. It's simcare@gmail.com.

13 Q. And at the -- in the addresses section  
14 of the page, are there addresses that include Bill  
15 Merlino, Agro Fortis Supply, William Merlino and Bill --?

16 A. Yes, there is.

17 Q. Okay. Did you identify Bill  
18 (unintelligible) during the course of this investigation?

19 A. Yes.

20 Q. And let's take a look at the next  
21 page. Can you tell the Jury what is associated with  
22 Government's Ten?

23 A. That's just a summary that I created  
24 of the registration information on PayPal.

25 Q. Okay. So for the account ending in

1 five eight four. That -- when was that account created?

2 A. That account was created on May 22nd,  
3 2014.

4 Q. Okay. Let's -- let's move on to the  
5 next page of Government's Ten and tell the Jury what is  
6 depicted on this page.

7 A. Sure. This page is just a monthly  
8 summary of D.N.P. transactions through that account.

9 Q. So Special Agent Arcari, were there  
10 additional PayPal transactions that are not included in  
11 this summary?

12 A. Yes, there was.

13 Q. How did you identify the transactions  
14 to include in this summary?

15 A. Well, in looking at, initially, the  
16 eBay transactions, kind of flowed right through to PayPal  
17 and then after eBay pulled the D.N.P. for sale. And  
18 that's kind of stated in the previous emails to and from  
19 the Defendant, to me in my undercover capacity. Direct  
20 sales were also paid for by -- or paid through PayPal.

21 Q. And did the PayPal record themselves  
22 have data, including the item sold for which payment was  
23 getting received?

24 A. That's correct. Much like the eBay,  
25 PayPal also captured the item for sale, listed for sale.



1 Q. So let's take a look at this page, the  
2 PayPal transactions monthly summary, what's depicted here?

3 A. You have the month and the year, total  
4 transactions for that month. And then gross payments  
5 received.

6 Q. So for November of 2017, which is the  
7 first month on your chart, how many D.N.P. PayPal  
8 transactions were there?

9 A. There were twelve transactions.

10 Q. And what was the gross payment amount  
11 for D.N.P. PayPal?

12 A. Six hundred eighty-seven dollars and  
13 ninety-five cents.

14 Q. Okay. Let's take a look to January of  
15 2018. That's the month of the tweets, how many D.N.P.  
16 PayPal transactions?

17 A. There were seventy-seven transactions.

18 Q. And what was the gross payment?

19 A. Five thousand seven hundred and  
20 eighteen and twenty-five cents.

21 Q. Now, moving forward to January of  
22 2019. How many D.N.P. PayPal transactions were there?

23 A. There were seventy-two transactions.

24 Q. And what was the gross amount of  
25 D.N.P. PayPal amounts?

1                   A.     Seven thousand seven hundred seventy-  
2                   three and sixty cents.

3                   Q.     So for the -- the time period from  
4                   November 2017 to January of 2019, how many D.N.P. PayPal  
5                   transactions did you identify?

6                   A.     Five hundred and sixty-nine.

7                   Q.     And what was the -- the gross payment  
8                   amount?

9                   A.     Fifty-four thousand fifty-two and  
10                  forty-eight cents.

11                  Q.     Let's take a look at the next page and  
12                  what's depicted here?

13                  A.     Here's just the yearly summary. We  
14                  have the transaction start date and transactions end date  
15                  for the specific year. Total number of transactions for  
16                  that year and then gross sales for that year.

17                  Q.     Okay. So for 2017, you had two  
18                  months' worth of sales, is that right?

19                  A.     Yes.

20                  Q.     Okay. And then for 2018, that's an  
21                  entire year's worth of sales?

22                  A.     Correct.

23                  Q.     And how many transactions for the year  
24                  of 2018?

25                  A.     2018 was four hundred fifty-five.

1 Q. Okay. And then you have just one  
2 month in January of 2019.

3 A. Correct.

4 Q. Okay. Now, you -- the -- the  
5 transaction end date is January 29th of 2019. Do you have  
6 data after January 29th of 2019?

7 A. I do not have data from PayPal.

8 Q. Okay.

9 A. But we know there was -- sales  
10 continued.

11 Q. And how do you know that?

12 A. Because I made the purchase on the  
13 31st of January.

14 Q. Okay. So let's -- let's take a look  
15 at them for the month of the data that you have up to  
16 January 29th of 2019, how many transactions were there?

17 A. Five hundred and sixty-nine.

18 Q. From the --

19 A. I'm sorry.

20 Q. -- that's your complete set --?

21 A. Complete, yes.

22 Q. Okay. How about for just the month of  
23 January 2019?

24 A. I'm sorry, seventy-two.

25 Q. Okay. So let's -- let's take a look

1 at the next page of the exhibit. And November of 2017,  
2 can you tell the Jury what's depicted here?

3 A. Yes, this is just a spreadsheet I  
4 created using the data PayPal provided. We have the  
5 purchase date, the actual name of the individual, in this  
6 case his eBay user I.D., a listed purchase source to  
7 separate eBay and then later on later purchases and then  
8 we have items sold.

9 Q. Okay. So and -- so in this case, if  
10 we take a look at the first transaction on November 8th,  
11 2017, here you have a name listed and that's the PayPal  
12 name. Is that right?

13 A. Correct.

14 Q. Okay. And then the PayPal data also  
15 contains the eBay user I.D.?

16 A. Yes it did.

17 Q. Okay. And you were able to cross  
18 reference these transactions with your eBay data?

19 A. That's correct.

20 Q. That's how you formed the column for  
21 purchases?

22 A. Yes.

23 Q. Let's take a look at the items sold in  
24 November of 2017. What's the description of the -- of the  
25 purchase for that November 8th, 2017?

1                   A.     So we have forty capsules of D.N.P.  
2     for potted plants, two hundred milligrams each.

3                   Q.     Let's move on to the next page of  
4     December of 2017. And directing your attention to a  
5     transaction on December 13th of 2017.

6                   A.     Yes, it's the --.

7                   Q.     Who's the purchaser?

8                   A.     The purchaser is David Freek (phonetic  
9     spelling).

10                  Q.     And what's the eBay user I.D.?

11                  A.     Freekus2015.

12                  Q.     And is that the data that you -- you  
13     testified about earlier this morning on your eBay data?

14                  A.     That's correct.

15                  Q.     And what's the description of the --  
16     of the purchase that David Freek made from SimCare?

17                  A.     D.N.P. agricultural use one hundred  
18     capsules, two hundred milligrams each one point twelve per  
19     capsule.

20                  Q.     Let's take a look at December 23rd of  
21     2017. And there is a purchase of a person whose name,  
22     first and last name begins with G?

23                  A.     Correct.

24                  Q.     Do you want to attempt it?

25                  A.     Sure. Name is Grondeorgi (phonetic

1 spelling).

2 Q. Okay. And is -- is that a name that  
3 that you also see on the Click-N-Ship data that  
4 (unintelligible)?

5 A. Yes.

6 Q. Let's take a look -- moving forward to  
7 February 2018. Let's take a look at the first line on  
8 February of 2018. On February 1st, there is a transaction  
9 and who is the purchaser?

10 A. The purchaser is Jack Knapman.

11 Q. And what is his eBay user I.D.?

12 A. 2014-Knapman, K-N-A-P-M --.

13 Q. And what's the -- the description of  
14 the item sold?

15 A. Two hundred D.N.P. agriculture use two  
16 hundred capsules one hundred twenty-five milligrams each.

17 Q. Moving forward to the next page on  
18 March of 2018. And directing your attention to March 13th  
19 of 2018. Is there another transaction with Mr. Knapman?

20 A. Yes, there is.

21 Q. And what's the description of that  
22 purchase?

23 A. Two hundred D.N.P. capsules.

24 Q. March 13th.

25 A. Yeah. All right. Bounce around here.

1 Two hundred D.N.P. capsules, one hundred twenty-five  
2 milligrams, agriculture use one -- one hundred twenty-five  
3 milligrams each.

4 Q. Going to move forward in your PayPal  
5 data up to August of 2018. And directing your attention  
6 to August 28th, 2018. Do you see your transaction  
7 depicted in the PayPal data?

8 A. Yes, I do.

9 Q. And can you just identify that for the  
10 Jury?

11 A. Sure. Buyer's name is Bryan, last  
12 name is redacted, eBay user I.D., Bripa77 (phonetic  
13 spelling). And the purchase was from eBay, D.N.P. fifteen  
14 grams Sim for thirty-three dollars.

15 Q. Now, is this the last page on your  
16 chart that -- that will select eBay transactions?

17 A. That's correct.

18 Q. Okay. So let's move to September  
19 2018, your PayPal transactions. How many transactions are  
20 listed here?

21 A. Four.

22 Q. And with respect to the purchase  
23 source, how -- how did you identify them?

24 A. With this here, I cross referenced the  
25 two emails that we had and was able to find email

1 correspondence of customers requesting to purchase D.N.P.  
2 from Dr. Merlino.

3 Q. On these days

4 A. On these dates, yes.

5 Q. Okay. So let's take a look moving  
6 forward to November of 2018.

7 By November of 2018, since you couldn't  
8 make a direct purchase from eBay for an undercover  
9 purchase, how did you make your second U.C. purchase of  
10 D.N.P. from Merlino?

11 A. So in October of that 2018, I directed  
12 an email from my undercover account to simcare@gmail.com,  
13 requesting to purchase more pills.

14 Q. Okay. And during the course of those  
15 communications, were you directed to a website?

16 A. That's correct. The Defendant  
17 directed me to his website at Fortissupply.com.

18 Q. Okay. So let's take a look saying on  
19 a -- on a PayPal transactions in October of 2018 when you  
20 had entered in the item sold, does that D.N.P. information  
21 come from PayPal?

22 A. That's correct.

23 Q. And the purchase source, what's  
24 depicted to you in October of 2018?

25 A. Agro Fortis Supply.



1 Q. So directing your attention to  
2 November of 2018 and approximately November 12th of 2018.  
3 Is there a purchase from a Justin Konen (phonetic  
4 spelling) from Agro Fortis Supply?

5 A. Yes there is.

6 Q. And what was that purchase for?

7 A. D.N.P. 2,4-Dinitrophenol capsules, two  
8 hundred milligrams, one hundred count.

9 Q. And on November 14th, is there a  
10 purchase by Jason Axe (phonetic spelling)?

11 A. Yes, there is.

12 Q. What's that for?

13 A. D.N.P. comma -- 2,4-Dinitrophenol  
14 capsules, two hundred milligram, one hundred count.

15 Q. On November 24th of 2018, is there a  
16 purchased by Michael Murphy?

17 A. There is.

18 Q. And what's that purchase for?

19 A. D.N.P. 2,4-Dinitrophenol capsules, two  
20 hundred milligram, one hundred count.

21 Q. And on November 30th of 2018, is there  
22 a purchase by Robert Levy?

23 A. Yes, there is.

24 Q. And what's that a purchase for?

25 A. D.N.P. capsules, two hundred milligram

1 per capsule, min order thirty.

2 Q. And directing your attention to the  
3 top of the page on 11/01/2018, there's a transaction  
4 depicted. Do you recognize it?

5 A. Yes, I do.

6 Q. And what transaction is that?

7 A. It was my undercover purchase using my  
8 undercover I.D.

9 Q. And what's the source of the purchase?

10 A. Agro Fortis Supply.

11 Q. And what was the items sold listed in  
12 the -- in the PayPal data?

13 A. D.N.P. 2,4-Dinitrophenol capsules, two  
14 hundred milligrams, one hundred count.

15 Q. Okay. Thanks.

16 MS. BURNES: You can take that down, Mr.  
17 Conway.

18 BY MS. BURNES: (Cont'g.)

19 Q. So can you tell the Jury the steps you  
20 took for your second U.C. purchase of D.N.P. from Merlino?

21 A. Sure. Like I said, my initial email  
22 to William Merlino, he directed me to his website, I went  
23 to the website, just like buying anything online, click,  
24 add to cart and then purchase. Gave me the option to use  
25 PayPal, I used PayPal.

1 Q. Okay. And -- and prior to conducting  
2 that purchase, did you also conduct social media searches  
3 and websites during the course of your investigation?

4 A. Yes, I did.

5 Q. So I want to direct your attention to  
6 Government's Forty-one through Government's Forty-seven.  
7 This is for identification only.

8 MS. BURNES: And Mr. Conway, you can stay  
9 on Forty-one.

10 BY MS. BURNES: (Cont'g.)

11 Q. If you could just take a look in your  
12 -- in your book. Special Agent Arcari, do Government  
13 Exhibits Forty-one through Forty-seven fairly and  
14 accurately depict screen captures of social media pages  
15 and websites that you reviewed in the course of your  
16 investigation?

17 A. Yes, they do.

18 MS. BURNES: The Government moves  
19 Government's Forty-one through Forty-seven into evidence.

20 MR. GAMBURG: No objection, Your Honor.

21 THE COURT: Admitted.

22 MS. BURNES: If we can publish Government's  
23 Forty-one, please? And if we can enlarge on that -- on  
24 the top half of the screen.

25 BY MS. BURNES: (Cont'g.)

1 Q. Can you tell the Jury what's depicted  
2 in Government's Forty-one?

3 A. Sure. This is a personal Facebook  
4 page for William A. Merlino and it displays his picture.

5 Q. Okay. And in addition to his picture,  
6 it has his name?

7 A. It does. William A. Merlino.

8 Q. And with respect to the intro, how  
9 does he describe himself?

10 A. He's listed as medical doctor at  
11 SimCare.

12 Q. And directing your attention just  
13 below what's depicted on the screen, there is a flag that  
14 says manages. What is it that is depicted there?

15 A. That's correct. It says, manages  
16 Simslim.

17 Q. And Simslim appears on Government  
18 Forty-one in blue. What does that mean?

19 A. That means it's a hyperlink to another  
20 Facebook page.

21 Q. Okay. And so what did you do?

22 A. I clicked on.

23 Q. Let's take a look at Government's  
24 Forty-two. Can you tell the Jury what's depicted in  
25 Government's Forty-two?

1 A. Sure. This is a Facebook page for the  
2 name Simslim.

3 Q. And directing your attention to the  
4 right-hand side team members for Simslim, who's depicted  
5 there?

6 A. William A. Merlino.

7 Q. And directing your attention to the --  
8 to the website under the contact information, can we  
9 enlarge that? What's the website that's depicted there?

10 A. It's [www.fortissupply.com](http://www.fortissupply.com).

11 Q. Okay. And if we -- if we pull back  
12 out on the left-hand side of the page, the word about is  
13 highlighted. Can you just describe to the grand jury what  
14 that means?

15 A. Sure.

16 Q. The jury.

17 A. Sure. That's, you know, you have your  
18 homepage and then the -- you tab down to the about page.  
19 And there you're going to find, you know, maybe an address  
20 or phone numbers, you'll find different information about  
21 the company.

22 Q. So Government's Forty-two is the about  
23 page of this page. Is that correct?

24 A. That's -- that is correct.

25 Q. Okay. And let's take a look at the

1 very bottom of the page. Simslim says it has a product  
2 and what's -- what's the product?

3 A. Simslim two hundred milligram  
4 capsules.

5 Q. And if we pull back out in the about  
6 section, what is Simslim about?

7 A. New fat burning diet program Simslim,  
8 lose up to ten pounds per month. Tele-video medical  
9 supervised weight loss by licensed (unintelligible) or  
10 office.

11 Q. So let's pull out. This -- this  
12 content is on the same page as the website. What is the  
13 website on Simslim?

14 A. Fortissupply.com.

15 Q. And that website is depicted in blue.  
16 So before we get to that page, let's take a look at Forty-  
17 three. Government's Forty-three, directing your attention  
18 to the left-hand side of the page. What is the section  
19 that's highlighted here on the left?

20 A. That is the homepage for Simslim.

21 Q. And so this is just a different screen  
22 within the same Simslim Facebook page?

23 A. That's correct.

24 Q. So let's -- let's -- let's take a look  
25 at the top of the Simslim Facebook page. On October 7th,

1           what's advertised on Simslim?

2                       A.    There's a website fortissupply.com,  
3           welcome to Agro Fortis leading supplier of D.N.P.  
4           fertilizers, D.N.P. 2,4-Dinitrophenol products for use in  
5           plant growth regulation.

6                       Q.    Okay. And again in the about section  
7           if we pull back up in the top right-hand side of the page,  
8           does the Fortis Supply website likewise have the about  
9           section here?

10                      A.    Yes, it does.

11                      Q.    And did you -- did you click on the  
12           Fortis Supply link?

13                      A.    I did.

14                      Q.    So let's take a look at Government's  
15           Forty-four. Can you tell the Jury what's depicted at  
16           Government's Forty-four?

17                      A.    Yes, this is a screen capture of the  
18           first page of the website.

19                      Q.    And which -- what's the name of the  
20           website?

21                      A.    Fortissupply.com.

22                      Q.    Okay. And then on the picture in the  
23           middle of the page?

24                      A.    Agro Fortis Supply, that's the name of  
25           the company.

1 Q. And with respect to the middle of the  
2 page, what is the greeting when you arrived at this  
3 landing page?

4 A. Welcome to Agro Fortis leading  
5 supplier of D.N.P. fertilizers, shop now.

6 Q. Let's take a look at the -- you can  
7 see that your screen capture has -- has a partial capture,  
8 if you will. Is that right?

9 A. That's -- that is correct, I can only  
10 get the top half of the page.

11 Q. Okay. So let's -- let's move on to  
12 Government's Exhibit Forty-five. And if we can zoom in on  
13 the top of Government's Forty-five. Can you -- can you  
14 explain to the Jury how Government's Forty-five relates to  
15 Government's Forty-four please?

16 A. Sure, I just scrolled the page down a  
17 little bit more and then made another screen capture.

18 Q. So at the top of Government's Forty-  
19 five, after welcome to Agro Fortis Supply, that's the same  
20 text that we -- we just saw?

21 A. Yes, it is.

22 Q. And now, can you explain to the Jury  
23 what's the picture under the featured products?

24 A. First one, we have a yellow powder  
25 D.N.P. 2,4-Dinitrophenol powder, ten thousand milligrams



1 for thirty-eight dollars. The second is a picture of  
2 cactus. With underneath D.N.P. 2,4-Dinitrophenol capsules  
3 two hundred milligram, one hundred count for ninety-eight  
4 dollars.

5 And again, you have powder, a yellow powder  
6 D.N.P. 2,4-Dinitrophenol powder, twenty thousand  
7 milligrams for sixty-eight dollars.

8 Q. Okay. So let's take a look at  
9 Government's Forty-six. Can you tell the Jury what's  
10 depicted here?

11 A. Sure, this is the 'contact us' portion  
12 of the page of the website.

13 Q. And what's the name of the -- of the  
14 business to be contacted?

15 A. It is Agro Fortis Supply.

16 Q. Where are they located?

17 A. 4630 Somers Point Road, Mays Landing,  
18 New Jersey 08330 in the U.S.

19 Q. Okay. And let's take a look at  
20 Government's Forty-seven. Can you tell the Jury what is  
21 depicted here?

22 A. Sure, that's just the cart page. I  
23 just selected an item and put it in the cart to see what  
24 it would look like, we're focusing on one of the products  
25 for sale.

1 Q. Okay. And so with respect to the  
2 product for sale, this was the 2,4-Dinitrophenol capsules  
3 two hundred milligram for ninety-eight dollars. What's  
4 the description of the product?

5 A. Description is herbicide and plant-  
6 growth regulator similar to a rooting hormone, may also be  
7 used as a wood preservative, pure yellow crystalline  
8 powder, no additives, one hundred 2,4-Dinitrophenol, two  
9 hundred milligram capsules, one hundred thirty-three  
10 milligrams dry weight, easy open capsules for mixing with  
11 water for application to your plants.

12 Not for human consumption, C.M.S.D.S.  
13 enclosed with the product, shipping via priority mail,  
14 email tracking and free insurance.

15 Q. Okay. And finally, if we take a look  
16 at Government's Exhibit -- well, let's move on  
17 chronologically. You indicated that you communicated with  
18 SimCare via email for your second U.C. buy?

19 A. That's correct. I emailed  
20 simcare@gmail.com in October 2018.

21 Q. So for identification purposes only,  
22 can we move on to Government's Forty-nine? And if we take  
23 a look at Government's Forty-nine, can you -- can you  
24 identify what's -- what's depicted in Government's Forty-  
25 nine?

1           A.     Sure.   This is an email, originated  
2           from my undercover Gmail account to simcare@gmail.com.

3           Q.     And does Government's Forty-nine  
4           contain a thread between you and SimCare during the course  
5           of several days?

6           A.     Yes, it does.

7           MS. BURNES:   Your Honor, the Government  
8           moves, Government's Forty-nine into evidence.

9           MR. GAMBURG:   No objection, Your Honor.

10          THE COURT:   Admitted.

11          MS. BURNES:   We can publish Forty-nine for  
12          the Jury.

13          BY MS. BURNES:   (Cont'g.)

14          Q.     So let's take a look at the top of  
15          Government's Forty-nine, the first two pages.   And if you  
16          can just explain to the Jury again, this is a screen  
17          capture of your Gmail?

18          A.     Yes.

19          Q.     Okay.   So let's take a look at the  
20          right-hand side.   What's the -- what's the first message,  
21          the date?

22          A.     The first message is dated October  
23          16th, 2018.

24          Q.     And -- and it's a message from you to  
25          Bill

1 A. That is correct.

2 Q. Okay. And how did you have that email  
3 information?

4 A. Just from previous emails to him and I  
5 kept the threads. So I'm -- I knew his email address.

6 Q. Okay. And what is it that you wanted  
7 to put in?

8 A. I said, "hi, Bill, I want to put in an  
9 order, looking to get better results this time. Should I  
10 up my game to two fifty or go three fifty? Thanks, bro."

11 Q. And did you get a response?

12 A. I did.

13 Q. And what -- what was the response?

14 A. The response from simcare@gmail.com,  
15 I'd recommend two hundred and fifty milligram, we triple  
16 pack the capsules to get max dose.

17 Q. And what was the instruction with  
18 respect to ordering?

19 A. "Use my website fortissupply.com,"  
20 signed Bill.

21 Q. Okay. And fortissupply.com is the  
22 website that we just looked at. Is that right?

23 A. That is correct.

24 Q. So now, moving forward to Thursday of  
25 October 18th. Did you write back to Merlino?

1 A. I did.

2 Q. And what did -- what did you tell him?

3 A. I wrote, "yo, Bill, I checked out your  
4 site. I don't see two fiftys to order, will you be adding  
5 new stuff, let me know what to do. Thanks, bro."

6 Q. And did you get a response?

7 A. I did.

8 Q. What was the response?

9 A. It was, "I'll send you PayPal invoice,  
10 one hundred question mark."

11 Q. And what does this indicate in the --  
12 in the summary and in addition to a simcare@gmail, what is  
13 the auto signature that appeared in that email?

14 A. simcare@me.com.

15 Q. And with respect to the auto signature  
16 after the PayPal invoice, what does it say?

17 A. Sent from Dr. Bill's iPhone.

18 Q. Okay. And is Dr. Bill the same screen  
19 name from the tweet?

20 A. Yes, it is.

21 Q. So moving down to -- to your response  
22 on Friday, October 19th, what did you tell Merlino?

23 A. "Yeah, let's do one hundred, I'll get  
24 with you next week, though. About to board a plane for  
25 vacay, getting some relax time in before I go

1 (unintelligible). Thanks, bro."

2 Q. Okay. And so that takes us to Friday  
3 of October 19th. Did you reach back out ten days later?

4 A. I did.

5 Q. And what was that message?

6 A. "Yo, Bill, I'm back. And want to get  
7 that order done, check the site but didn't see it added,  
8 was looking at products, what is tumenex (phonetic  
9 spelling), is it something good. Let me know about the  
10 order. Thanks, bro."

11 Q. And what was the response? On Monday,  
12 October 29th.

13 A. "One, two hundred question mark.  
14 That's all I have now."

15 Q. Okay. So turning -- moving on to the  
16 next page because this way it's replicated. Let's take a  
17 look at your response on Monday October 29th.

18 A. "Yeah, I guess you are running short  
19 question mark. Last guy left me hanging and fucked me out  
20 at two hundred bucks, need a reliable guy. Should I go to  
21 your website?"

22 Q. And moving to the middle of the page.  
23 What did SimCare --?

24 MS. BURNES: Mr. Conway, further down.

25 BY MS. BURNES: (Cont'g.)

1 Q. To the middle of the page on Monday,  
2 October 29 at three fifty-five p.m. What did SimCare  
3 instruct you to do?

4 A. Order from website.

5 Q. Okay. And did you order from the  
6 website as you told the grand jury -- jury?

7 A. Yes, I did, yes, I did.

8 Q. Did you receive the package that you  
9 ordered?

10 A. I did.

11 Q. Did you receive it right away?

12 A. I did not.

13 Q. And can you tell the Jury what  
14 happened?

15 A. Yeah. Initially, the first U.C. buy,  
16 undercover buy, got sent to the wrong address. So I  
17 contacted him, told him, my package got sent to the wrong  
18 address. And he responded back that he would either try  
19 to retrieve it or just send me a new package.

20 Q. And this is the second U.C. buy, is  
21 that right?

22 A. That's correct. Second buy, yes.

23 Q. Okay. And are those communications  
24 then likewise contained in Exhibit Forty-nine?

25 A. Yes, they are.

1 Q. Okay. So I want to direct your  
2 attention to Government's Exhibits Fifty and Forty-eight  
3 for identification purposes only and Fifty-three. So  
4 we'll start with Government's Fifty-three, if you just  
5 want to look in your binder, what's depicted at  
6 Government's Fifty-three?

7 A. Government Fifty-three is a screen  
8 capture of the cart page for Fortissupply.com.

9 Q. Okay. And Government's Fifty, what's  
10 depicted there?

11 A. Fifty is the confirmation of a  
12 purchase page on fortissupply.com.

13 Q. And Government's Forty-eight, what's  
14 depicted there?

15 A. Forty-eight is a email to my  
16 undercover email account at Gmail from the U.S. Postal  
17 Service with the Click-N-Ship notification.

18 Q. And do these exhibits fairly and  
19 accurately depict the screen captures that you made to  
20 document your U.C. buy?

21 A. Yes, they do.

22 MS. BURNES: The Government moves admission  
23 of Government's Fifty-three, Fifty and Forty-eight.

24 MR. GAMBURG: No objection, Your Honor.

25 THE COURT: Admitted.



1 MS. BURNES: Let's start, Mr. Conway at  
2 Government's Exhibit Fifty.

3 BY MS. BURNES: (Cont'g.)

4 Q. If you could just explain to the Jury,  
5 what's -- what's depicted here.

6 A. Sure. Like I said, this is the  
7 confirmation page on fortissupply.com.

8 Q. So on the left-hand side, what does it  
9 say?

10 A. It list -- it "says thank you," your  
11 --.

12 Q. And with respect to the right-hand  
13 side, what does it say about your order?

14 A. Your order is D.N.P. 2,4-Dinitrophenol  
15 capsules, two hundred milligram, one hundred count for  
16 ninety-eight dollars.

17 Q. And let's take a look then at  
18 Government's Forty-eight. Can you tell the Jury what's  
19 depicted here?

20 A. Yes, that is the U.S.P.S. Click-N-Ship  
21 notification to my undercover Gmail account.

22 Q. And moving to the middle of the page  
23 with respect to the Click-N-Ship notice. What is the  
24 shipping from?

25 A. It's shipped from Agro Fortis supply,

1 4630 Catawba Avenue, www.fortissupply.com Mays Landing,  
2 New Jersey 08330.

3 Q. Okay. And -- and is that shipping  
4 location in the Eastern District of Pennsylvania?

5 A. Yes, it is.

6 Q. And you explained to the Jury that  
7 your original postal got -- got sent to the wrong address  
8 and did you eventually get what you ordered?

9 A. Yes, I did.

10 Q. So let's take a look at Government's  
11 Fifty-one through Fifty-five for identification purposes  
12 only. Government's Exhibits Fifty-one, Fifty-two, Fifty-  
13 two P, Fifty-four, Fifty-four P and Fifty-five. Are those  
14 photos in the physical evidence documenting you sent an  
15 U.C. buy?

16 A. Yes, it is.

17 MS. BURNES: The Government moves  
18 Government's Exhibit Fifty-one, Fifty-two, Fifty-two P,  
19 Fifty-four -- Fifty-four and Fifty-four P were already in  
20 evidence, Fifty-five into evidence.

21 MR. GAMBURG: No objection, Your Honor.

22 THE COURT: Admitted.

23 BY MS. BURNES: (Cont'g.)

24 Q. And Special Agent Arcari, I'm  
25 approaching with Fifty-two P and Fifty-four P. Can you

1 describe to the Jury what it is that you received?

2 A. So starting with the priority mail  
3 envelope as you see shipped from Agro Fortis Supply at  
4 4630 Catawba Avenue, [www.fortissupply.com](http://www.fortissupply.com). Mays Landing,  
5 New Jersey 08330.

6 Q. And what's -- what was contained  
7 within that envelope?

8 A. And then within that envelope was a  
9 baggie with one hundred, red and white capsules.

10 Q. Now, the -- the baggie that you're  
11 holding up is -- is within a protective sleeve. Is that  
12 right?

13 A. Yes, it is.

14 Q. Okay. What color is the baggie even  
15 with the capsules removed?

16 A. Yellow.

17 Q. Okay. And if you can explain to the  
18 Jury what is depicted on the label, it's also depicted on  
19 -- on the -- on the screen.

20 A. 2,4-Dinitrophenol two hundred  
21 milligrams, Sigma-Aldrich, U.S.A. ninety-nine percent S.A.  
22 one hundred capsules, expires 12/01/2020, not for human  
23 consumption.

24 Q. And would the contents of the baggie  
25 the capsules that are depicted on the -- on the

1 photograph, were they sent to the F.D.A.'s forensic  
2 chemistry lab for analysis?

3 A. Yes, they were.

4 Q. And in sum, what was the analysis?

5 A. The results were that they contained  
6 D.N.P.

7 Q. Let's take a look then moving forward.  
8 At your direction did another F.D.A. O.C.I. agent make up  
9 an undercover purchase of D.N.P. from Merlino?

10 A. Yes, he did.

11 Q. And what was -- what was the purpose  
12 of this purchase?

13 A. The -- I'd used my undercover name two  
14 times already, so I wanted to try to get a buy in from  
15 another individual, just to see as a new customer how he  
16 would respond.

17 Q. And directing your attention then to --  
18 -- for identification purposes only -- Exhibits Eighty-one  
19 through Eighty-four. Are these -- are these Gmail emails  
20 between the F.D.I. -- F.D.A. agents and -- and the  
21 attachment?

22 A. Yes. This depicts Gmails from the  
23 Agro Fortis Supply to the undercover agent.

24 Q. Can you generally describe then how --  
25 how this purchase took place? Where was the order made

1 through?

2 A. Looking at this email, the undercover  
3 agent purchase, went to the website fortissupply.com, made  
4 the purchase there. And I don't recall how he paid but he  
5 did order it from fortissupply.com.

6 Q. Okay. So the government and any  
7 response to this communications, did -- were the  
8 communications received at the -- at the F.D.A. Gmail  
9 account?

10 A. Yes.

11 MS. BURNES: The government moves Exhibit  
12 Eighty-one through Eighty-four into evidence.

13 MR. GAMBURG: No objection, Your Honor.

14 THE COURT: Admitted.

15 BY MS. BURNES: (Cont'g.)

16 Q. Let's take a look at Government's  
17 Exhibit Eighty-one. And if we take a look at the top of  
18 the page, what's -- what's the date of this Gmail?

19 A. It's Monday, December 3rd, 2018.

20 Q. And who's the email from?

21 A. It's from Agro Fortis Supply at --  
22 merlin@acm.org.

23 Q. And what is the subject of the -- of  
24 the email?

25 A. Agro Fortis Supply order confirmation

1           pound R five one six three two seven three five zero.

2                       Q.   And the -- if we can take a look then  
3           at the confirmation email itself in the body, who -- where  
4           is the purchase coming from?

5                       A.   The purchase is coming from Agro  
6           Fortis Supply at 4630 Somers Point Road, Mays Landing, New  
7           Jersey 08330.

8                       Q.   And -- and where is the purchase going  
9           to?

10                      A.   It was shipped to Jason, last name and  
11           address redacted, in Pittsburgh, Pennsylvania.

12                      Q.   And -- and this is the purchase that  
13           was made at -- at your direction, correct?

14                      A.   That's correct.

15                      Q.   Take a look at the order summary, what  
16           was the -- what was ordered?

17                      A.   D.N.P. 2,4-Dinitrophenol capsules two  
18           hundred milligram, one hundred count for ninety-eight  
19           dollars.

20                      Q.   Okay. So directing your attention to  
21           Government's Eighty-two. Can you tell the Jury what the  
22           subject line of this Gmail is?

23                      A.   Sure. The subject line of this is  
24           customer acknowledgement for purchase of D.N.P.

25                      Q.   What's the date of this email?

1 A. December 5th, 2018.

2 Q. And who is it from?

3 A. It is from simcare@gmail.com to Jason,  
4 redacted the undercover Gmail account.

5 Q. Okay. And what's depicted in this  
6 email from SimCare to the new user -- user Jason?

7 A. And it's a purchase agreement, the  
8 D.N.P. purchase agreement from Agro Fortis Supply,  
9 Limited, at 4630 Somers Point Road, Mays Landing, New  
10 Jersey 08330. And the agreement is with the company and  
11 the buyer.

12 Q. Okay. And what does the agreement  
13 state?

14 A. By replying to this email I  
15 acknowledge I am of legal age in the state, in which I  
16 reside, my purchase of D.N.P. 2,4-Dinitrophenol is for  
17 agricultural purposes. I have reviewed the attached  
18 D.N.P. M.S.D.S. Material Safety Data Sheet and understand  
19 that D.N.P. is unsafe for human consumption.

20 If purchasing encapsulated D.N.P. I  
21 understand that it is for use to make standardized  
22 dilutions for application to plants. I am not purchasing  
23 capsules for oral consumption. D.N.P. is considered  
24 hazardous to human health and excessive exposure or ingest  
25 -- ingestion has led to death.

1 Q. And is there a picture of a P.D.F.  
2 depicted in this email?

3 A. Yes, there's a P.D.F. titled D.N.P.  
4 M.S.D.S.one.pdf.

5 Q. Okay. And is the printout of that  
6 depicted on this email.

7 A. Okay.

8 Q. But is that depicted at Government's  
9 Eighty-four?

10 A. Yes, it is.

11 Q. Okay. And just scrolling down to the  
12 end of this thread. Does the -- does Jason, the customer  
13 Jason, reply all understood?

14 A. Yes, he does.

15 Q. And -- and was the package received to  
16 the -- to the address that it was ordered to?

17 A. Yes, it did.

18 Q. Special Agent Arcari, did you ever  
19 receive this D.N.P. purchase agreement in your first two  
20 U.C. buys?

21 A. I did not.

22 Q. And moving ahead did you do another  
23 purchase on January 31st of 2019?

24 A. I did.

25 Q. Did you get this D.N.P. purchase



1 agreement?

2 A. No, I did not.

3 Q. Did you ever receive an M.S.D.S. in  
4 any of your purchases?

5 A. No, I did not.

6 Q. And how many days before eBay removed  
7 all D.N.P. listings for sale, did you make your first  
8 purchase from Merlino at SimCare?

9 A. That day.

10 Q. Let's take a look at Government's  
11 Eighty-three, can you tell the Jury what's depicted on  
12 Government's Eighty-three?

13 A. Sure, it's an email to the undercover  
14 Gmail account from the U.S. Postal Service, subject line  
15 Click-N-Ship notification.

16 Q. And is -- is this like we saw with  
17 your prior purchases, this is the post office  
18 communication with the shipping --?

19 A. Correct, it's shipped from Agro Fortis  
20 Supply, 4630 Mays Landing Road, Mays Landing, New Jersey  
21 08330, shipped to Jason redacted in Pittsburgh,  
22 Pennsylvania.

23 Q. And what's the date of this shipping  
24 notice?

25 A. December 5th, 2018.

1 Q. Okay. So the clicking -- the Click-N-  
2 Ship account confirmations that we saw for the first two  
3 of your undercover transactions, they appeared on  
4 Inspector Piasecki's chart in the Nancy O'Brian account.  
5 Is that right?

6 A. That's correct.

7 Q. And now this transaction for December  
8 of 2018, this appears on that -- on that second, Click-N-  
9 Ship account, the William Merlino account. Is that right?

10 A. That's correct.

11 Q. And let's take a look then at  
12 Government's Eighty-four. Is this the P.D.F. that was  
13 sent to the new customer together with the customer  
14 acknowledgement for the purchase of D.N.P.?

15 A. Yes, it is.

16 Q. And this is the document that you  
17 never received?

18 A. I never received this document.

19 Q. In the course of your purchase?

20 A. In the course of my purchases, yes.

21 Q. Okay. For identification purposes  
22 only. Let's take a look at Government's Exhibits Eighty-  
23 five through Ninety.

24 MS. BURNES: And Your Honor, I think this  
25 will take us way up to about twelve thirty, if that's

1 appropriate.

2 THE COURT: That's fine.

3 BY MS. BURNES: (Cont'g.)

4 Q. Government's Exhibit Eighty-five and  
5 well, Government's Exhibit Eighty-six and Eighty-six P are  
6 already in evidence. So let's take a look at Government's  
7 Exhibits Eighty-five, Eighty-seven, Eighty-eight, Eighty-  
8 nine and Ninety. Do you recognize these documents?

9 A. I do.

10 Q. Okay. Are they -- are they pictures  
11 of the transaction that you just described?

12 A. Yes. These are pictures of the  
13 Pittsburgh undercover buy.

14 Q. And do they fairly and accurately  
15 depict the -- the envelope, the baggie and the shipping  
16 materials related to that purchase?

17 A. Yes, they do.

18 MS. BURNES: The Government moves Eighty-  
19 five, Eighty-seven, Eighty-eight, Eighty-nine and Ninety  
20 into evidence.

21 MR. GAMBURG: No objection.

22 THE COURT: Admitted.

23 BY MS. BURNES: (Cont'g.)

24 Q. And Special Agent Arcari, I'm handing  
25 you one other exhibit, which is Government's Ninety P.

1           What is Ninety P?

2                   A.    Ninety P is the sealable baggie that  
3           contain the pills with a label of 2,4-Dinitrophenol two  
4           hundred milligrams, Sigma-Aldrich, U.S.A. ninety-nine  
5           percent S.A., one hundred capsules, expires 12/01/2020,  
6           not for human consumption.

7                   Q.    Okay. And this Ninety P the physical  
8           exhibit that's depicted in the picture is Ninety?

9                   A.    Yes, it is.

10                  MS. BURNES: And the Government likewise  
11           moves Ninety P into evidence.

12                  MR. GAMBURG: No objection.

13                  THE COURT: Admitted.

14                  BY MS. BURNES: (Cont'g.)

15                  Q.    So let's -- let's take a look then if  
16           you have Eighty-six P and Ninety P. Let me  
17           (unintelligible) Eighty-six P. Can you explain to the  
18           Jury what -- what Eighty-six P and Ninety P are?

19                  A.    Yeah. So this is basically what was  
20           shipped to the undercover agent in Pittsburgh. It's a  
21           priority mail envelope. Listing Agro Fortis Supply, 4630  
22           Mays Landing Road, Mays Landing, New Jersey 08330.

23                  And within this envelope, contain this  
24           baggie with one hundred red and white capsules D.N.P.

25                  Q.    Special Agent Arcari on the physical

1 evidence that you're holding, the -- the envelope and  
2 label, can you describe what if any coloration there is  
3 along the envelope and label there?

4 A. Sure, when looking at the priority  
5 mail label, you can see yellow tint around the label.

6 Q. And if -- can you describe for the --  
7 on the baggie, the baggie has now been emptied of its --  
8 of its contents. The clear baggie, what color is it now?

9 A. Right, so you got like a yellow tint  
10 residual.

11 Q. Let's take a look then at Government's  
12 Eighty-eight, just for -- and is this a picture of the  
13 envelope and the contents of the envelope?

14 A. Yes.

15 Q. And Government's Ninety -- Eighty-  
16 nine, what's depicted here?

17 A. Picture of the baggie with the label  
18 2,4-Dinitrophenol, two hundred milligrams, Sigma-Aldrich,  
19 U.S.A. ninety-nine percent S.A., one hundred capsules,  
20 expires 12/01/2020, not for human consumption.

21 Q. Okay.

22 MS. BURNES: Your Honor, I have plenty more  
23 but I'm moving on to a new topic. So I don't know if it's  
24 five minutes.

25 THE COURT: Yeah. We can break now. Yeah,

1 rigorously, you know --

2 MS. BURNES: Okay.

3 THE COURT: -- go by the clock, figure out  
4 what's an appropriate break point and it sounds like this.  
5 This is our -- ladies and gentlemen of the Jury, we just  
6 got five extra minutes for lunch. So we'll do our best to  
7 reconvene at one thirty, all rise.

8 Mr. Henry had said you wanted to discuss  
9 scheduling?

10 MS. BURNES: Yes, Your Honor. I -- as I  
11 said I have Special Agent Arcari here. I expect to take  
12 him through his testimony this afternoon. And I know  
13 he'll be subject to cross. I have another witness lined  
14 up behind him, it's Mr. Borden should we get that far.

15 The next two witnesses, Dr. Simone from the  
16 F.D.A. who's out of town and Dr. Goldberg, who's a  
17 practicing oncologist, so they're lined up for tomorrow.  
18 I have every reason to believe that we're sort of on track  
19 to finish the day, but the other two witnesses are not  
20 able to be in court here today.

21 THE COURT: All right. Have you figured  
22 out tomorrow morning, whether you're going to call  
23 Goldberg first or Simone?

24 MS. BURNES: I haven't figured that out but  
25 --.

1 THE COURT: Okay. Just, yeah.

2 MS. BURNES: I mean, I want to see how far  
3 we get.

4 THE COURT: The one seems like it'd be  
5 shorter witness but yeah.

6 MS. BURNES: Okay.

7 MR. GAMBURG: Judge, I have one issue  
8 that's a legal issue with respect to the witness that's on  
9 the stand now, as far as cross examination goes may I  
10 address that.

11 THE COURT: Sure. Why not, yeah. And you  
12 can sit down, Counsel.

13 MR. GAMBURG: Thank you. Let the  
14 government (unintelligible) Exhibit G Twenty-five and  
15 (unintelligible) sort of alluded to it, Your Honor in  
16 their pre-trial memo but for different reasons. Judge,  
17 they stopped with the recommended use, which is on page  
18 two of (unintelligible) and did not read in the answer.

19 And I fully intend on reading the rest of  
20 that email in Your Honor, it's admissible, it's admissible  
21 under Rule 106 of the rules of evidence, which is  
22 basically the adoption of the common -- common law rule  
23 for completeness.

24 Clearly, the undercover officer was trying  
25 to elicit from Dr. Merlino how to orally take that, Dr.

1 Merlino's response was Bryan, on Thursday, September 6th,  
2 2018, at twelve forty-eight p.m. says, I see, what do you  
3 recommend for use, this is the first time I ever bought  
4 it, thanks.

5 And the response was depending on the size  
6 of the plant, most (unintelligible) one capsule a day  
7 dissolved in one gallon water (unintelligible) response is  
8 less than desired. So I'll have a cross examine on that,  
9 Your Honor, I think it's admissible on Rule 106.

10 MS. BURNES: You know, that is pure  
11 oversight on my part, I believe it's wholly admissible.

12 THE COURT: Okay, I'm sorry.

13 MS. BURNES: So I, you know, I may -- these  
14 threads are challenging. And but if we don't go back that  
15 far, I have absolutely no objection to that.

16 THE COURT: Okay. I'm sorry. Okay.

17 MR. GAMBURG: I just -- in reading the  
18 pretrial, on that and I thought (unintelligible).

19 THE COURT: Well, I think the government in  
20 the pretrial memo took the position that any statements by  
21 the Defendant would be hearsay and therefore not  
22 admissible. And you're saying that in the context of this  
23 thread, that there should be -- that that prohibition  
24 should not apply and under the rule of completeness, that  
25 should be included?



1 MR. GAMBURG: That's correct.

2 MS. BURNES: I agree with that principle,  
3 Your Honor. But in fact, as I said that is pure oversight  
4 on my part and -- and so it will either, I can go back to  
5 that point or --.

6 THE COURT: No, yeah, I think Mr. Gamburg  
7 wants to know, in advance, I think --

8 MS. BURNES: Yes.

9 THE COURT: -- is the Judge going to say  
10 this is hearsay or is he going to say (unintelligible) --

11 MR. GAMBURG: Right, I don't want to --

12 THE COURT: -- went under the rule of  
13 completeness.

14 MS. BURNES: Yes.

15 MR. GAMBURG: I want to (unintelligible).

16 THE COURT: And I appreciate that.

17 MS. BURNES: No, I appreciate that too.

18 THE COURT: (unintelligible) issue and it  
19 sounds like there's a meeting of the minds between the  
20 parties.

21 MR. GAMBURG: Yeah.

22 MS. BURNES: And I'm -- I'm -- I'm trying  
23 to just move through this --

24 THE COURT: I can never follow these  
25 threads, Counsel, so I would not fret over --.

1 MR. GAMBURG: And I would not suggest that,  
2 you know, there was anything improper. I just look at  
3 that in accordance with the pretrial memo.

4 MS. BURNES: Understood. There is one  
5 other matter that is not specifically related to emails,  
6 it does relate to the agent. And this goes back to  
7 scheduling. Your Honor, it was my intent with the Court's  
8 permission and with the Defendant's consent that I was  
9 going to move the -- the D.N.P. investigative evidence in  
10 through a Special Agent Arcari.

11 There is -- consistent with the  
12 stipulations, there are two other pieces of evidence, the  
13 Shore medical records and the -- and the -- the Y Max  
14 phone records that more naturally fit after Mr. Borden and  
15 Dr. Goldberg have testified.

16 So to recall this witness just to introduce  
17 those records into evidence. If -- if the -- if the Court  
18 or the Defendant objects to that --.

19 THE COURT: I have no -- I have no problem  
20 with that because this is cross examination. Again, Mr.  
21 Gamburg will have the opportunity to cross examine at that  
22 point.

23 MR. GAMBURG: And if the government wants  
24 to do it that way or by way of stipulation either way --

25 THE COURT: Understood.

1 MR. GAMBURG: -- (unintelligible).

2 THE COURT: Understood.

3 MR. GAMBURG: As the Court (unintelligible)

4 they are what they are.

5 THE COURT: Right, I appreciate it.

6 MS. BURNES: Right. I just want to let you

7 know that I plan to conclude in that way. And then -- and

8 then put the other evidence in later.

9 THE COURT: That's fine.

10 MS. BURNES: Okay.

11 THE COURT: All right. Good.

12 MR. GAMBURG: Thank you, Your Honor.

13 THE COURT: And then how long will Dr.

14 Simone be as a witness?

15 MS. BURNES: I mean, I think he will be

16 less than an hour.

17 THE COURT: All right. So I'm just trying

18 to really get my arms around that we think we may be

19 getting to the Jury (unintelligible).

20 MS. BURNES: I have to say at the beginning

21 of the week, that was not my projected understanding but I

22 -- I --.

23 MR. GAMBURG: I told Ms. Burnes I intended

24 to be shorter --

25 THE COURT: All right. Then --.

1 MR. GAMBURG: -- what it is.

2 MS. BURNES: Okay.

3 THE COURT: This is just --

4 MS. BURNES: Yes.

5 THE COURT: -- for me to get my  
6 (unintelligible) done. And so on that score --

7 MS. BURNES: I think, well.

8 THE COURT: -- on that score, I'm going to  
9 finish with my review of the -- the Jury instructions over  
10 the lunch break and ... okay.

11 MS. BURNES: Okay.

12 THE COURT: Okay. And then I'm really --  
13 as to what I'll call the generalized and procedural  
14 instructions because we're not a hundred percent -- yeah.

15 MS. BURNES: Okay. Thank you.

16 THE COURT: We're not a hundred percent  
17 sure whether they all pertain, I'm not really worrying  
18 about them and we'll deal with them more extemporaneously.  
19 But as to the substantive aspects of the charge. I want  
20 us to have, you know, clarity on that. And then I think  
21 on the other -- the evidentiary piece, the two that are,  
22 that I have, I'm making revisions to but which are  
23 important have to do with the -- the Dr. Goldberg part of  
24 the case and then other prior statements, they deal with  
25 credibility and what the evidence means.

1                   So those two and then the substance of  
2                   instructions are the ones that I want you to focus on.  
3                   The rest are routine. If you disagree with that, you'll  
4                   let me know but and then on venue, what I -- what I've  
5                   done is I've loaded in the defense suggestion and the  
6                   third circuit's endorsed Eighth Circuit version for you  
7                   both to get a look at.

8                   And we'll make a decision based on that,  
9                   but as I previously advertised, I don't find the third  
10                  circuit standard charge anything (unintelligible)  
11                  confusing. Especially on the facts of this case. And so  
12                  I'm inclined to go with either Mr. Gamburg's version or  
13                  the Eighth Circuit version, you can look at the two and  
14                  see what you think.

15                 MS. BURNES: Understood.

16                 MR. GAMBURG: Yes, Your Honor.

17                 THE COURT: All right. Thank you.

18                 MS. BURNES: Thank you.

19                 THE COURT CLERK: All rise.

20                 (Off the record, 12:32:45 to 13:33:56)

21                 THE COURT: All rise. Ladies and  
22                 gentlemen, we'll continue.

23                 MS. BURNES: Thank you, Your Honor.

24                 BY MS. BURNES: (Cont'g.)

25                 Q. Special Agent Arcari, before lunch I

1        had taken you through several communications and I want to  
2        complete the discussion. Back on Government's Exhibit  
3        Twenty-five if we can publish that to the Jury. And  
4        Government's Exhibit Twenty-five is an -- is an email  
5        thread related to your first U.C. buy. Is that right,  
6        Agent?

7                    A.    Yes, it is.

8                    Q.    Okay. And I -- I know we discussed  
9        the -- the top of the first page of -- of Government's  
10       Exhibit Twenty-five, the communications along August 28th  
11       and 29th. Directing your attention then to the -- to the  
12       bottom of the thread September 5th of 2018, after you  
13       received your package, did you reach out by email to  
14       Merlino at SimCare?

15                   A.    Yes, I did.

16                   Q.    And -- and what is it that you asked  
17       him?

18                   A.    I wrote "hey, Bill, I got my pills but  
19       didn't see any directions. I'm pretty new at this stuff.  
20       What do you recommend? It says two hundreds on the  
21       baggie, but was one fifty on the confirmation receipt kind  
22       of confused and don't want to mess up, thanks."

23                   Q.    Okay. And the next part of that  
24       thread, if we look at the very bottom, did you get a  
25       response from SimCare to Bryan on Thursday, September 6th

1 of 2018?

2 A. Yes, I did.

3 Q. Okay. And let's turn the page. And  
4 is that response on the -- on the top of the second page  
5 of Government's Twenty-five?

6 A. Yes, it is. It says gross weight or  
7 capsules and D.N.P. is two hundred milligram net D.N.P. is  
8 one hundred and fifty milligram.

9 Q. Okay. Directing your attention then  
10 to the center of that page. Did you reply to that  
11 response?

12 A. I did.

13 Q. And what did you ask?

14 A. "I see, what do you recommend for use?  
15 This is the first time I ever bought it. Thanks."

16 Q. And what was the response?

17 A. The response back was "depending on  
18 the size of the plant, most growers start with one capsule  
19 a day, dissolved in one gallon of water max three per day  
20 if response is less than desired in affecting growth."

21 Q. Okay. Why did you ask him about the  
22 dosing?

23 A. I was trying to elicit an answer from  
24 him regarding dosing.

25 Q. And he responded about plants, did he?

1 A. Yes, he did.

2 Q. Okay. Let's -- let's move forward  
3 then in your investigation to January of 2013. You've  
4 previously testified that at the end of January 20th, 2019  
5 you did another undercover purchase of D.N.P. from the  
6 defendant. Is that correct?

7 A. That is correct.

8 Q. Let's take a look at -- for  
9 identification at Exhibit Sixty-four, Sixty-two and Sixty-  
10 three. Do you recognize Government's Sixty-four?

11 A. Yes.

12 Q. What -- what is it?

13 A. It's an email correspondence between  
14 my undercover account and Mr. Merlino's account.

15 Q. Okay. And what is at Sixty-two?

16 A. Sixty-two is an email confirmation  
17 from Agro Fortis Supply to my undercover Gmail account.

18 Q. And what is Government's Sixty-three?

19 A. Sixty-three is a shipping email  
20 confirmation. This one from PayPal using U.S. Postal  
21 Service just listing my shipping information.

22 MS. BURNES: Okay. And so the government  
23 moves Government's Exhibit Sixty-four, Sixty-two and  
24 Sixty-three into evidence.

25 THE COURT: Any objection, Mr. Gamburg?



1 MR. GAMBURG: No, Your Honor.

2 THE COURT: Admitted.

3 MS. BURNES: If we can publish now Sixty --  
4 let's start with Sixty-four.

5 BY MS. BURNES: (Cont'g.)

6 Q. Now, at the -- at the top of  
7 Government's Sixty-four there's an email dated November  
8 14th, 2018. Can you tell the Jury what's depicted in that  
9 email?

10 A. Sure. It was an email from my  
11 undercover email account to Merlino asking what do you  
12 recommend with the two fifty's for max results? I think I  
13 have one fifty -- one hundred and fifty milligrams before.

14 Q. And what was his response?

15 A. His response was it depends on your  
16 plant's response. Most growers start at two then go up or  
17 down based on response that -- two a day.

18 Q. Okay. And are those communications  
19 associated with your second purchase of D.N.P. from the  
20 defendant?

21 A. Yes.

22 Q. So now moving forward to your third  
23 purchase of D.N.P. can you tell the Jury what -- what you  
24 did to purchase D.N.P. the third time?

25 A. Yeah. Just like before, I sent him an

1 email requesting to purchase more pills and he told me  
2 that the website would be easier. So that's what I did.  
3 I went to Fortissupply.com.

4 Q. Okay. Let's take a look then at the  
5 middle of Government's Sixty-four. On January 30th of  
6 2019 did you order -- did you write to William Merlino?

7 A. Yes, from my undercover Gmail account  
8 it went to simcare@icloud.com "Yo Bill, want to put in  
9 another order. Do I still go through the website?"

10 Q. And did you get a response?

11 A. I did.

12 Q. What's the response?

13 A. "Website easier. Thanks." Sent from  
14 Dr. Bill's iPhone.

15 Q. And did you reply?

16 A. "Bill, placed my order. Can you make  
17 sure you have the correct address this time? Thanks."

18 Q. And what's that in response to?

19 A. That was in response to the second  
20 undercover buy that the package was lost.

21 Q. So moving forward then did you -- did  
22 you place the order through the website?

23 A. Yes, I did.

24 Q. Let's take a look at Government's  
25 Sixty-two. And tell the Jury what's depicted in

1 Government's Sixty-two.

2 A. Sixty-two is a confirmation email from  
3 Agro Fortis Supply to my undercover email.

4 Q. And what's the date?

5 A. The date is January 31st, 2019.

6 Q. And what is the order?

7 A. The order was for D.N.P. 2,4-  
8 Dinitrophenol capsules two hundred milligram, one hundred  
9 count.

10 Q. And let's take a look at Government's  
11 Sixty-three. Can you tell the Jury what's depicted here?

12 A. Yes, this is a -- a shipment  
13 notification to my Gmail account, but this one came from  
14 service@paypal.com.

15 Q. So with respect to the shipping, you  
16 didn't get a Click-N-Ship receipt this time?

17 A. That's correct.

18 Q. But it still includes the U.S. Postal  
19 Service number. Is that right?

20 A. Yeah -- yes, that's correct.

21 Q. And let's -- let's take a look at the  
22 bottom of the page where the seller -- who's listed as the  
23 seller?

24 A. The seller is listed as Agro Fortis  
25 Supply with the email address simcare@gmail.com.

1 Q. And what is your -- at the bottom of  
2 the page what's the description of your purchase?

3 A. The description was D.N.P. 2,4-  
4 Dinitrophenol capsules two hundred milligram, one hundred  
5 count, ninety-eight dollars and seventy-five cents.

6 Q. Okay. So after you placed that order  
7 on January 31st of 2019 did you and -- and other agents do  
8 surveillance the following day?

9 A. That is correct.

10 Q. And what was the purpose?

11 A. The purpose was to follow Merlino into  
12 the post office with packages and to, you know, positively  
13 I.D. him doing so.

14 Q. And during the course -- after  
15 surveillance concluded -- at -- at that part of the  
16 surveillance where were you positioned in the morning?

17 A. Special Agent Lento and I were  
18 positioned outside the driveway and waiting for him to  
19 come out and then follow him.

20 Q. Okay. So you weren't in the post  
21 office when he brought packages into the post office?

22 A. No, I was not.

23 Q. Now after surveillance concluded, did  
24 you -- did you return to the post office with Postal  
25 Inspector Piasecki?

1           A.    Yes, we both went inside, spoke to the  
2           postal manager there and she brought us around back where  
3           we looked at the -- the few parcels that he did drop off  
4           were in a bin.

5                    So we went back and kind of went through  
6           there and I located the -- the package addressed to my  
7           undercover name.

8           Q.    So let's take a look at Sixty-nine and  
9           Sixty-nine P already in evidence. Can you just show the  
10          Jury the -- what's depicted at Sixty-nine-P?

11          A.    Sure. Here's the priority envelope I  
12          was talking about and then in the bottom, right-hand  
13          corner is where I put my initials and then put it back  
14          into the mail bin.

15          Q.    And did you receive that envelope and  
16          its contents in Springfield, Pennsylvania?

17          A.    Correct. Several days later I went to  
18          my undercover address and retrieved this package.

19          Q.    So let's take -- marked for  
20          identification only Exhibits Sixty-five through Seventy-  
21          two. Government's Exhibits Sixty-five, Sixty-six, Sixty-  
22          seven, Sixty-eight, Seventy-one and Seventy-two, are those  
23          pictures of the -- the physical evidence that you've  
24          talked about in the course of this purchase of D.N.P. from  
25          --?

1 A. That's correct.

2 Q. And do they fairly and accurately  
3 capture the -- the items that they depict?

4 A. Yes, they do.

5 Q. And I just put in front of you Sixty-  
6 five-P and Seventy-one-P. What are they?

7 A. Sixty-five-P is the sealable baggie  
8 that contains pills which was in the envelope.

9 Q. And what is Seventy-one-P?

10 A. Seventy-one-P is a receipt of sale  
11 with my order summary from Agro Fortis Supply.

12 Q. And are those -- are those two items  
13 in --substantially in the same condition as -- as when you  
14 last saw them?

15 A. Yes, they are.

16 Q. And you entered them into evidence  
17 during the course of this case?

18 A. Yes, I did.

19 MS. BURNES: The government moves Sixty-  
20 five, Sixty-five-P, Sixty-six, Sixty-seven, Sixty-eight,  
21 Seventy-one, Seventy-one-P and Seventy-two into evidence.

22 MR. GAMBURG: No objection.

23 THE COURT: Admitted.

24 MS. BURNES: So let's just start at Sixty-  
25 five. Can we publish that for the Jury?

1 BY MS. BURNES: (Cont'g.)

2 Q. First off, before we look at the  
3 pictures, can you just hold up and -- and explain to the  
4 Jury then what -- which one is the envelope and what was  
5 in the envelope?

6 A. Sure. So going back to the envelope  
7 that I retrieved from my undercover address. This is a  
8 copy of the order confirmation receipt from Agro Fortis  
9 Supply to me that was inside the envelope and then the  
10 baggie -- re-sealable baggie with the capsules.

11 Q. So let's take a look at the baggie  
12 with the capsules depicted in -- in Sixty-five. Did --  
13 did this baggie contain any stickers on it at all?

14 A. It did not.

15 Q. And as you held up the -- the baggie  
16 containing the capsules is it a clear baggie?

17 A. No, I mean it has the same yellow  
18 residue.

19 Q. Let's take a look at then the invoice  
20 that is Seventy-one. The original invoice can you  
21 describe the color to the -- to the Jury?

22 A. Yeah -- yes, that -- that was the same  
23 what -- it was in the box with the D.N.P. and clearly  
24 yellow tinted.

25 Q. And let's take a look then back at

1 Government's Exhibit Sixty-six. What's depicted on Sixty-  
2 six?

3 A. Sixty-six is just a staging photo I  
4 took of the -- of the capsules inside the baggie after  
5 retrieving it from the undercover address.

6 Q. Okay. And what's depicted in Sixty-  
7 seven?

8 A. Sixty-seven is just a closer-up  
9 picture of the invoice taking note at the bottom of the  
10 file name user -- SimCare or SimCa which I took to mean  
11 SimCare.

12 Q. And with respect to Government's  
13 Sixty-eight what's depicted there?

14 A. Sixty-eight is another staging photo  
15 after retrieving the package and I just took it -- just  
16 showing the inside what was used for packaging.

17 Q. So the capsules wrapped in the invoice  
18 -- wrapped in the bubble bag?

19 A. Correct.

20 Q. And finally let's take a look at  
21 Government's Seventy. And we've taken a look at this, but  
22 is that a close up of the B.A.?

23 A. Yes, that's correct, my initials.

24 Q. Okay. And are those the initials that  
25 you put on the package that day?



1 A. Yes, they are.

2 Q. Let's take a look at Seventy-two.  
3 What's depicted here?

4 A. This is a close-up photo of the  
5 priority mail label sender Agro Fortis Supply, 4630 Somers  
6 Point Road, Mays Landing, New Jersey addressed to Bryan,  
7 the rest redacted, in Springfield, P.A.

8 Q. And as we pull back out, this is not a  
9 Click-N-Ship label. Is that correct?

10 A. That's correct.

11 Q. Okay. And so that -- that didn't  
12 appear on -- on the Click-N-Ship data?

13 A. That's right.

14 Q. Now in addition to emails --?

15 MS. BURNES: You can take that down, Mr.  
16 Conway. Thank you.

17 BY MS. BURNES: (Cont'g.)

18 Q. In addition to emails in your  
19 undercover capacity, in the course of your investigation,  
20 did you review other Merlino emails in this case?

21 A. Yes, I did.

22 Q. And what were the sources of those  
23 emails?

24 A. One source was from our U.K.  
25 counterparts that retrieved emails in their investigation

1 and forwarded them to me. And then the other one was a  
2 search warrant that was executed on the email accounts  
3 simcare@gmail.com.

4 Q. Okay. So I want to direct your  
5 attention to Government's Exhibit Twelve. This was the  
6 subject of a stipulation earlier. Can you identify for  
7 the Jury -- for identification purposes, what is  
8 Government's Exhibit Twelve-A?

9 A. This is an email correspondence  
10 between Jack Knapman and SimCare.

11 Q. And it's a -- it's a two-page label  
12 and then the certification from your counterpart in the  
13 U.K. Is that correct?

14 A. That's correct.

15 MS. BURNES: The government moves Exhibit  
16 Twelve-A.

17 MR. GAMBURG: No objection, Your Honor.

18 THE COURT: Admitted.

19 MS. BURNES: And let's publish to the Jury  
20 -- thank you.

21 BY MS. BURNES: (Cont'g.)

22 Q. Directing your attention then to the  
23 -- to the middle of the page because again, this is a  
24 thread, the middle of the page for Tuesday, 13th of March.

25 A. That's correct. So in chronological

1 order starting from SimCare sent Tuesday, March 13th  
2 subjected U.S.P.S. tracking to jackknapman@hotmail.co.uk.

3 Q. Okay. And what does SimCare tell Jack  
4 Knapman in the -- in the early part of this?

5 A. Thank you for your order. U.S.P.S.  
6 tracking C.J. one six two eight two three nine eight five  
7 U.S. valued as a gift.

8 Q. And then let's move on to for  
9 agriculture use.

10 A. For agriculture use, dilute one  
11 capsule in one gallon of water and use daily on your  
12 plants. You can -- you can save on shipping by combining  
13 orders with friends we can ship five units of one hundred  
14 for the same price.

15 Q. Okay. And what's the next section  
16 SimCare states?

17 A. All capsules are pure crystalline  
18 D.N.P., no additives or diluters are in the capsules. It  
19 is shipped from manufacturer with ten percent water for  
20 safety. We dry D.N.P. before encapsulation. S.A. of  
21 capsules is plus five percent by weight average one  
22 hundred and thirty-three milligrams.

23 Q. Okay. And turning to the second page  
24 of Government's Twelve-A what's the --

25 A. Write --.

1 Q. -- next instruction from SimCare?

2 A. Write to simcare@gmail.com for  
3 questions and other ordering or payment methods. In the  
4 past when this was a legal diet medication in the U.S. and  
5 sold over the counter, average dose was one capsule two or  
6 three times a day. By short -- short circuiting the  
7 energy cycle, Krebs cycle, sugar was converted to heat,  
8 dose was adjusted to tolerance of warming.

9 This was discovered when dockworkers  
10 loading the material on ships became overheated. Each  
11 capsule equates to sixty to ninety minutes of exercise,  
12 which can burn up to twelve hundred calories when taking  
13 one capsule three times a day. Patients may loss (sic) up  
14 to ten pounds per month depending on muscle mass. About  
15 one in five hundred can be allergic and develop hives.  
16 They just stopped D.N.P. and took some Benadryl.

17 One pound of human fat contains thirty-six  
18 hundred calories kilo. Therefore, twenty minutes of  
19 exercise per day or two hundred calories of excess food  
20 results in ten pound gain or lose (sic) per year. The  
21 reason each diet cycle is slower and less successful is  
22 that people will lose both fat and muscle with relapse  
23 more fat than muscle is regained lowering the metabolic  
24 rate, making weight gain faster to acquire and harder to  
25 lose.

1 I am a retired physician and have an  
2 extensive use of D.N.P. -- D.N.P. on plants and people.  
3 Please feel free to write regarding use of D.N.P. for your  
4 plants. Average dose was one or two capsules up to three  
5 times a day depending on response.

6 Q. And who -- who -- what is the -- the  
7 email signed by?

8 A. Signed sincerely, William A. Merlino  
9 R.P.H. M.D. F.A.A.F.P.

10 Q. And with respect to the -- the items  
11 in red at the bottom?

12 A. Labeling may be different for some  
13 countries to facilitate customs' clearance. If custom  
14 holds package, I can send you M.S.D.S. Safety Data Sheets  
15 showing contents are safe.

16 Q. Special Agent Arcari, there is  
17 reference in this email to the -- to the term patients,  
18 did you recover any patient records for Jack Knapman  
19 during the course of your investigation?

20 MR. GAMBURG: Objection, Your Honor. May I  
21 see the Court at sidebar?

22 THE COURT: Yeah, we'll take a brief huddle  
23 in the sidebar. Our first in the entire trial. So --.

24 (Sidebar)

25 MR. GAMBURG: Your Honor, there's some

1 evidence with a medical exam report as well as an opinion  
2 in the United Kingdom and Mr. --

3 MS. BURNES: Not going there.

4 MR. GAMBURG: -- Not going there --

5 MS. BURNES: All -- all -- I mean all in  
6 the same incident there are no patient records in this  
7 case. There are customer records, no patient records.

8 MR. GAMBURG: Okay.

9 THE COURT: Good. Very well.

10 MS. BURNES: Okay.

11 THE COURT: Thank you.

12 (End of sidebar)

13 MR. GAMBURG: Thank you. Your Honor, I  
14 will withdraw the objection.

15 THE COURT: You're welcome. We get clarity  
16 in sidebar and we can go on from there.

17 BY MS. BURNES: (Cont'g.)

18 Q. Special Agent Arcari, there is a  
19 reference to patients in this email. Did you recover any  
20 patient records from your search of the defendant's home  
21 or business?

22 A. No, we did not.

23 Q. Did you recover customer or business  
24 records for Jack Knapman in this case?

25 A. Yes.

1 Q. Okay. Did you see him on PayPal  
2 receipts?

3 A. Yes.

4 Q. Did you see him on Click-N-Ship  
5 account?

6 A. Yes.

7 Q. And you saw evidence of payment from  
8 Knapman to -- to Merlino? Is that right?

9 A. Yeah.

10 A. That's correct.

11 Q. Now, directing your attention back to  
12 Exhibit Twelve-A. On the first page did Jack Knapman  
13 reply to SimCare on March 21st of 2018?

14 A. Yes, he did.

15 Q. And Special Agent Arcari, at -- at  
16 that point in time of March of 2018, was eBay -- was --  
17 was D.N.P. still available on eBay in the United States?

18 A. Yes.

19 Q. During that time period was D.N.P.  
20 available on eBay in the U.K.?

21 A. No.

22 Q. So let's -- let's take a look at -- at  
23 March 21st of 2018. What does Jack Knapman inquire of  
24 SimCare?

25 A. He writes, hello, I have a question

1       regarding when D.N.P. was used for human consumption.  
2       Assuming that human's tolerance was quite high, with the  
3       amount of calories burned increased proportionately to the  
4       D -- D.N.P. dose. So if three capsules per day equates to  
5       twelve hundred would nine capsules a day equate to thirty-  
6       six hundred and twelve equate to forty-eight hundred?

7               Just curious on the way it works within the  
8       body back when it was legal medication for humans, and not  
9       just for plants. All the best, Jack Knapman.

10              Q. And does this email contain a response  
11       to that question?

12              A. No, it does not.

13              Q. Okay. With respect to twelve equate  
14       to forty-eight hundred what's -- what's your understanding  
15       of what that means?

16              A. That many caps and calories burned.

17              Q. Okay. So directing your attention to  
18       Government's Exhibits Twelve B, C, and D. Are these all  
19       emails from SimCare to that same customer Jack Knapman  
20       recovered by your counterparts in the U.K.?

21              A. Yes, they are.

22              MS. BURNES: The government moves admission  
23       of Government's B, C, and D into evidence.

24              MR. GAMBURG: No objection, Your Honor.

25              THE COURT: Admitted.



1 BY MS. BURNES: (Cont'g.)

2 Q. So directing your attention to Twelve-  
3 B. And we'll go about one-third down. This is an email  
4 from dpn@simcare.com dated April 30th, 2018 to  
5 jackknapman@hotmail.co.uk. What's the subject of this  
6 email?

7 A. D.N.P. 2,4-Dinitrophenol bonus ten  
8 percent with referrals.

9 Q. And what's the body of the email?

10 A. This is what we call like a blast  
11 email, you know, sent out to a customer list. D.N.P. in  
12 different capsule amounts and showing the pricing.

13 Q. Okay. Now, in red what is the -- the  
14 first part of the email sent?

15 A. D.N.P. 2,4-Dinitrophenol is no longer  
16 listed -- available via eBay.

17 Q. And moving down to the bottom of the  
18 email, does it offer an alternative for patients?

19 A. Send email to dnp@simcare.com to  
20 order. Be sure to include the desired quantity. Shipping  
21 box can accommodate up to four hundred capsules.

22 Q. Let's take a look at Government's  
23 Exhibit Twelve-C. What's the date of this email?

24 A. The date is May 9th, 2018.

25 Q. And who is it from?

1 A. From dnp@SimCare.com.

2 Q. Who's it to?

3 A. jackknapman@hotmail.co.uk.

4 Q. And what -- what's the contents of  
5 this email with respect to D.N.P. customers?

6 A. Same thing, just listing of different  
7 quantity of capsules and pricing.

8 Q. In the -- in the middle of the email  
9 after the red when it says that D.N.P. remains available  
10 for agricultural use in two hundred milligram capsules and  
11 the -- and the amounts of quantities. Is this the same  
12 customer who he had just discussed the dosing and usage  
13 and calorie content associated with D.N.P. use?

14 A. Yes.

15 Q. And let's take a look at Twelve-D for  
16 May 31st of 2018. Who's this email from?

17 A. This is from simcare@gmail.com.

18 Q. And who's it to?

19 A. To jackknapman@hotmail.co.uk.

20 Q. This is the same customer from  
21 Government's Exhibit Twelve-A which -- which discussed the  
22 -- the dosing. Is that right?

23 A. That's correct.

24 Q. And what's the content of this email?

25 A. Large print, new pricing D.N.P. email

1        simcare@gmail.com for reorder. And it lists two  
2        quantities, twenty grams at forty-eight dollars and twenty  
3        grams encapsulated one hundred by two hundred milligrams  
4        for sixty-eight dollars.

5                    Q. And how is the email signed?

6                    A. Regards, Bill.

7                    Q. Now you talked about another source of  
8        emails that you reviewed in the course of your  
9        investigation Special Agent Arcari, and what were those  
10       emails?

11                   A. There were -- those were emails from  
12       Google.

13                   Q. And how -- who hosts Gmail?

14                   A. Google.

15                   Q. Yeah, okay.

16                   A. Yes.

17                   Q. So can you describe the process for  
18       acquiring emails from Google?

19                   A. Sure. When working in investigation,  
20       we develop facts. And then what I do is I draft what's  
21       called an affidavit listing those facts to get to probable  
22       cause that in this particular instance, the emails being  
23       used in furtherance of a crime. So draft an affidavit, go  
24       before a judge, judge reads it, signs it, and then after  
25       that I swear on it, and it's served.

1 Q. And did you follow that process to get  
2 emails in this case?

3 A. Yes, I did.

4 Q. And what email account did you follow  
5 that process for?

6 A. Simcare@gmail.com.

7 Q. Now directing your attention to  
8 Government's Exhibit One fifty-one to One sixty-seven.  
9 Are those all emails from Google that are part of the  
10 search warrant returned for simcare@gmail.com?

11 A. That's correct.

12 MS. BURNES: Would the Court prefer that I  
13 go in smaller chunks with respect to foundation of each of  
14 these emails?

15 THE COURT: Well, let's just see are -- are  
16 there going to be any issues as to the foundation.

17 MS. BURNES: Okay.

18 THE COURT: If not, we can do  
19 (unintelligible) more quickly.

20 MS. BURNES: Well, let's --.

21 MR. GAMBURG: There will not be.

22 THE COURT: There will not be.

23 MS. BURNES: Okay. Well, then I need  
24 admission of Government's Exhibit One five one to One six  
25 seven.

1 THE COURT: All right. Before trial,  
2 members of the Jury, the counsel often exchange all the  
3 documents, exhibits and so forth, that gives them the  
4 opportunity in advance to know whether there's an  
5 evidentiary issue. So I appreciate Mr. Gamburg's  
6 cooperation. And with that foundation, no objection, then  
7 you may proceed.

8 MS. BURNES: Thank you, Your Honor. If we  
9 can take a look at Government's Exhibit One five one.

10 BY MS. BURNES: (Cont'g.)

11 Q. Can you tell the Jury what's depicted  
12 in Government's Exhibit One five one?

13 A. Yes, it's an email from Pamela Lynn to  
14 simcare@gmail.com.

15 Q. Okay. And moving down in the page  
16 early in the thread is there an -- an earlier email?

17 A. Yes. There's one from  
18 simcare@gmail.com to Pamela Lynn.

19 Q. What's the date of this email?

20 A. The date is November 27th, 2018.

21 Q. And who's Pamela Lynn?

22 A. We learned that Pamela Lynn was  
23 Merlino's ex-wife.

24 Q. What's the subject line of this email?

25 A. She took eight pills at one time.

1 Q. And under the subject line she took  
2 eight pills at one time, there's a line of script in blue.  
3 What is that?

4 A. It's a link to a news article on the  
5 website telegraph.co.uk.

6 Q. Okay. Did -- did you click on that  
7 news article?

8 A. Yes, I did.

9 Q. Directing your attention to  
10 Government's Exhibit One five two. Is this the news  
11 article?

12 A. Yes, it is.

13 Q. What's the headline of the news  
14 article that Merlino sent to his ex-wife?

15 A. First manslaughter conviction for  
16 D.N.P. diet pill dealer after toxic pill -- pills killed  
17 student.

18 Q. And directing your attention to the  
19 second page. Does it indicate that the woman took eight  
20 pills?

21 A. It does not.

22 Q. At the -- at the top of the  
23 photograph?

24 A. Oh, I'm sorry. Yeah, Eloise (phonetic  
25 spelling) took eight pills and died hours after being

1 admitted to hospital.

2 MS. BURNES: Okay. We can take that down.

3 BY MS. BURNES: (Cont'g.)

4 Q. Let's take a look at Government's  
5 Exhibit One five three. What's depicted in Government's  
6 Exhibit One five three?

7 A. These are emails between a customer  
8 and simcare@gmail.com.

9 Q. Okay. So let's -- let's take a look  
10 at the -- the bottom of the page. Because again, this is  
11 a thread. What language is showing up in the -- in the  
12 bottom of the page? Do you know?

13 A. I do not.

14 Q. Okay. So pull -- pulling -- pulling  
15 back up to the middle of the page in English. What is the  
16 subject line at the top of the page?

17 A. Fortis Supply order.

18 Q. And who is the top email from?

19 A. It is from simcare@gmail.com.

20 Q. And what's the first name of the  
21 customer here?

22 A. To Jimmy (unintelligible).

23 Q. Okay. In the middle of the page, this  
24 customer indicates where he expects the order to arrive?

25 A. Switzerland.

1 Q. So let's take a look at the bottom of  
2 the page now. What does SimCare tell Jimmy as to shipping  
3 to Switzerland?

4 A. "Jimmy, thanks for the order, free  
5 shipping is only with U.S. as you might expect.  
6 Switzerland would be twenty-five dollars U.S., have sent a  
7 bill. Let me know if you still want product or will  
8 refund your payment. Ship as a gift with value question  
9 -- question mark labeled as yellow pigment number twelve.  
10 Signed, Bill."

11 Q. And did you see this label with yellow  
12 pigment number twelve in emails -- in -- in multiple  
13 emails in the simcare@gmail.com account?

14 A. Yes, that's correct.

15 Q. And what's the purpose of shipping  
16 with yellow pigment number twelve internationally?

17 A. To get it past customs.

18 Q. Let's take a look at Government's One  
19 five four. Directing your attention to the middle of the  
20 page there's an email from Sim -- SimCare to an address  
21 that starts with Brayden, B-R-A-Y-D-E-N. What's the  
22 subject of that email?

23 A. D.N.P. 2,4-Dinitrophenol new price.

24 Q. And what's the date of it?

25 A. September 13th, 2018.



1 Q. Now, Special Agent Arcari, what -- let  
2 -- let's take a look at the email. What -- what's the  
3 first thing that this email advises the customer?

4 A. D.N.P. has been permanently removed  
5 from eBay effective 09/01/2018.

6 Q. And what's the next statement SimCare  
7 --?

8 A. SimCare Agro Fortis Limited will  
9 continue to offer this product as powder or encapsulated  
10 for easier measurement when applying to plants.  
11 www.fortissupply.com. Please send email if you have any  
12 questions. Have a great day. SimCare.

13 Q. Is this the customer that you  
14 identified in -- in eBay records?

15 A. Yes, it is.

16 Q. And are those the same -- did the  
17 PayPal records drop off in September of 2018 because of  
18 the removal from PayPal -- from eBay?

19 A. Yes.

20 Q. So let's take a look at this -- this  
21 customer's response at the -- at the top. Subject --  
22 what's the subject of the -- of the email?

23 A. D.N.P. 2,4-Dinitrophenol new price.

24 Q. And who's the email to?

25 A. It's from Brayden Sander to SimCare.

1 Q. What does the customer ask SimCare?

2 A. "Hi, what's your pricing for two  
3 hundred, two hundred milligram capsules shipped to Canada,  
4 Vancouver. I can e-transfer you the money or pay via  
5 credit card online. I've ordered half a dozen times from  
6 you on eBay. Thanks."

7 Q. Okay. Let's take a look at another  
8 customer at One fifty-five. Let's take a look at the  
9 email starting at the bottom of the page with this thread.  
10 What's the -- what's the email at the bottom of the page?

11 A. "Will definitely spread the word,  
12 great stuff for my plants. We love the purchase in powder  
13 form but not sure what capsule machine to purchase also.  
14 Also worried about how to measure the same dosage. Any  
15 pointers I can get from you?"

16 Q. Okay. And that email was in response  
17 to the -- to the email below. What's the original  
18 SimCare email?

19 A. 'Dean, thanks for the order, shipping  
20 this a.m. Have a great day. Spread the word. Bill."

21 Q. Okay. And in response to Dean's  
22 question about dosage and capsule machines, let's take a  
23 look at the second email on the thread Monday, November  
24 5th at nine-fifty a.m. How did SimCare reply to his  
25 customer?

1           A.    He wrote "Capsuling sells machine and  
2           capsules. They are on Amazon. Need accurate scale and  
3           weight amount powder one -- one capsule. For example, one  
4           hundred by two hundred capsules. Weigh out twenty grams  
5           then add two capsule machine surface. If a -- heavier  
6           substance need to add filler for equal volume fill. On  
7           the negative side, it is messy and yellow powder stains  
8           everything including you. Good luck."

9           Q.    And what -- what does Dean inquire on  
10          the top of the page?

11          A.    One last question. "What size capsule  
12          would you recommend for two hundred milligram each?"

13          Q.    Okay. Let's take a look at  
14          Government's Exhibit One five six and another customer.  
15          If we turn our attention to the second page of  
16          Government's Exhibit One five six. This is again -- this  
17          is a thread. On Saturday, December 30th of 2017 what did  
18          SimCare write to his customer subject?

19          A.    Subject line is D.P.N. distribution  
20          opportunity.

21          Q.    And what's the content of the email?

22          A.    "Thank you for ordering D.P.N. from  
23          our company. I am looking for expanding our market. But  
24          as you've seen, shipping internationally is expensive per  
25          unit. Would you be interested in an exclusive marketing

1 relationship in your country or region? The average  
2 consumption is one to three capsules per day depending on  
3 the ability to tolerate the heat.

4 Each capsule is equivalent to two hours of  
5 exercise for a one-hundred-kilogram person. A small  
6 International Express box can contain a minimum of five  
7 one hundred capsule units for more if in bulk. Presently  
8 they are packaged in forty or one hundred unit containers.  
9 We are tightening the containers to prevent capsule  
10 separation in transit.

11 The bulk price to you would be fifty  
12 percent off list with a minimum order of two hundred and  
13 fifty dollars U.S. Please write if you are interested."

14 Q. Okay. And turning back to the first  
15 page. On January 31st of 2018 did the customer reply to  
16 SimCare?

17 A. Yes, he did.

18 Q. And what was the reply?

19 A. "Sorry for the delayed answer, but I  
20 wanted to test your product. I'm using your D.N.P. right  
21 now and in my view, it is heavily under dosed. I'd say  
22 that one capsule is somewhere around one hundred  
23 milligrams or even less. So I'm willing to make a new  
24 order from you and your latest offer, five hundred  
25 capsules for two hundred and fifty U.S. dollars is

1 reasonable taking into account the dosage per capsule."

2 Q. And directing your attention to the  
3 second page then. What is the name of this customer?

4 A. This is Georgie Garang (phonetic  
5 spelling).

6 Q. And is that a customer that you saw in  
7 the shipping records and the eBay records and the PayPal  
8 records?

9 A. Yes, it is.

10 Q. So moving up the thread on  
11 Government's Exhibit One five six, where -- where is this  
12 customer -- according to his signature block where is he  
13 based?

14 A. He is located in Romania.

15 Q. Okay. So let's take a look at  
16 Government's Exhibit One five seven. Government's Exhibit  
17 One five seven is again, being a thread, let's take a look  
18 at the second page of Government's Exhibit One five seven.  
19 Middle of the page, does SimCare on November 8th, 2018  
20 send an email?

21 A. Yes, it does.

22 Q. And what -- what type of email is  
23 that?

24 A. It looks to be what we call like a  
25 blast email to customers.

1 Q. Okay. And what -- what does this  
2 email say?

3 A. "Several have written about content  
4 consistency. We have replaced the capsule packing service  
5 with a more reliable one. To demonstrate our product  
6 reliability, we will send you nine two hundred and fifty  
7 milligram D.N.P. capsules for a penny if you pay postage.  
8 www.fortissupply.com select sample nine capsules for a  
9 penny and check out. We'd like to -- we'd like you to  
10 take another look at us and our product. Have a great  
11 day."

12 Q. Okay. Directing your attention then  
13 to the first page of Government's Exhibit One five seven.  
14 On November 11th, 2018 did a customer named David F. reply  
15 to this SimCare ad?

16 A. Yes, he did.

17 Q. And what did he propose to SimCare?

18 A. He's inquiring on whether they could  
19 help each other out.

20 Q. And did David Freek describe how he  
21 wanted to -- how they could help each other out?

22 A. Yes, he did.

23 Q. How did David Freek identify himself?

24 A. David Freek is a marathon runner in  
25 Canada.

1 Q. And directing your attention to the  
2 second paragraph of this November 11th, 2018 email, what  
3 was David Freek's proposal?

4 A. He wrote, what I was thinking --  
5 wondering is if in exchange for one hundred caps the  
6 normal order I would do, I promote your services to my  
7 contacts at Sarms King (phonetic spelling) and also on the  
8 Pro Circuit in Canada and the U.S. Obviously, this would  
9 be super safely done. I'm in the world anti-doping agency  
10 testing pool as are the rest of my friends. So you would  
11 never have to worry about anything like someone doing  
12 something stupid, or even talking about the product for  
13 human consumption.

14 Q. And directing your attention -- what  
15 does it mean when he says doing something stupid or  
16 talking about the product for human consumption?

17 A. Just you know keeping it secret.

18 Q. So let's take a look at Government  
19 Exhibit -- well, does -- does David Freek also at the  
20 conclusion of One five seven talk about how he has  
21 previously ordered D.N.P. from SimCare?

22 A. Yes.

23 Q. What does he tell SimCare?

24 A. He writes "anyway, let me know what  
25 you think. I'd love to partner with you. I like to use

1 D.N.P. in my offseason to get back to race weight super-  
2 fast and don't use much at all. One hundred caps normally  
3 last me the whole year ha-ha. I'm racing in Huston in  
4 January till it's time to get back down to Kenyan-like  
5 frame ha-ha."

6 Q. And how does David Freek conclude with  
7 respect to this email?

8 A. "I hope to talk with you soon. And  
9 thank you for your time and quality product over the last  
10 couple of years both on eBay originally and through your  
11 site. Kind regards, Dave Freek."

12 Q. So let's take a look at Government's  
13 One five eight. Did SimCare respond to David Freek about  
14 his proposal to promote D.N.P. to members of his  
15 professional marathon-running community?

16 A. Yes, he did.

17 Q. So let's take a look at Government's  
18 One five eight at the bottom of the page. What's the date  
19 of the email from Sim -- SimCare to David Fleet?

20 A. The date is November 12th, 2018.

21 Q. This is the following day from the  
22 email that you just read?

23 A. Yes.

24 Q. And how did SimCare reply?

25 A. SimCare replied "interesting. Could



1 put a from your site link with reduced shipping costs et  
2 cetera and work out a percentage to you. Seven a.m. here  
3 running out to do errands. Let's talk more when we are  
4 both free."

5 Q. Okay. And it says from. Is that --  
6 is that an auto-correct to the word forum?

7 A. Yes.

8 Q. As we turn the page to Government's  
9 Exhibit One five-A, does this email continue?

10 A. It does.

11 Q. How did Merlino conclude the email?

12 A. "Tell me your thoughts as you know  
13 needs to be shipped to Canada as yellow pigment twelve,  
14 one of its uses. Signed, Bill."

15 Q. Okay. So in response to a customer  
16 who's talking about dosing, and talking about his longtime  
17 use of D.N. -- Merlino's D.N.P. Merlino advises that it  
18 needs to be shipped to Canada as yellow pigment number  
19 twelve. Is that right?

20 A. That's correct.

21 Q. So let's go back to the top page of  
22 Government's Exhibit One five eight. Did David Freek  
23 reply on November 12th, 2018 to SimCare?

24 A. Yes, he did.

25 Q. How did he reply?

1                   A.    He wrote, "Hey, Bill, I'd certainly be  
2                   willing to set up a link on my site for you. Don't feel  
3                   obligated to give me a percentage of sales. I have a day  
4                   job as a well -- as well as running as a biopharma sales  
5                   rep. So I don't -- I do well, but it's totally up to you.  
6                   I like the idea of a reduced shipping cost to Canada if  
7                   the purchase goes through my link. Yellow pigment number  
8                   twelve. Interesting. That's smart and obviously, like I  
9                   mentioned before, I want to be sure it's discreet for your  
10                  protection as well as mine."

11                 Q.    Let me stop you there. What does that  
12                  mean I want to be sure it's discreet for your protection  
13                  as well as mine?

14                 A.    I believe just the conversation of --  
15                  of human consumption as opposed to fertilizer use.

16                 Q.    Is it permissible to import D.N.P.  
17                  into the United States?

18                 A.    No.

19                 Q.    Is it permissible to ship D.N.P. for  
20                  human consumption into Canada?

21                 A.    No.

22                 Q.    So let's -- let's take a look at the  
23                  -- at another portion of David Freek's email. Further  
24                  down, does -- does he indicate that -- that he would  
25                  provide Merlino's information to his friends so they can

1 continue this relationship?

2 A. Yes. He writes also on a side note,  
3 "I know of a large contingent of Canadians and Americans,  
4 for that matter, who are looking for a reliable source.  
5 Most used a fellow named Cliff or the old fertilizer  
6 warehouse, they are -- they are on one of the forums that  
7 used to be a large player in the Sarms (phonetic spelling)  
8 game. So if you'd like me to pass along your info to  
9 them, I would be more than happy to. I know a new thread  
10 has started looking for a reliable company to order from a  
11 couple of times a week."

12 Q. Okay, and after -- let's see. After  
13 these two emails, did Merlino and Freek according to their  
14 communications, did they make plans to -- for Merlino to  
15 ship capsules to Freek?

16 A. Yes, they did.

17 Q. And are those plans documented in  
18 emails at the simcare@gmail.com -- I'm sorry,  
19 simcare@gmail.com emails that you reviewed in this case?

20 A. Yes they are.

21 Q. So let's take a look at Government's  
22 Exhibit One five nine. Okay. So at the bottom of the  
23 page the thread from SimCare to David Freek on November  
24 13th of 2018, SimCare responds to David Freek on November  
25 13th, 2018. Is that right?

1 A. Yes.

2 Q. Okay. So the lowest email on  
3 11/13/2018 is from Freek to SimCare. Is that right?

4 A. That's correct.

5 Q. Okay. And -- and what does David  
6 Freek tell SimCare?

7 A. He writes, "you know what, for the  
8 purpose of giving them to the runners -- that's the best  
9 but I'm thinking I can use either two hundred or two-  
10 fifty. I normally run five hundred milligrams personally,  
11 but I can also run six hundred meters just spacing it out  
12 every eight hours.

13 Two hundreds are definitely the best bet  
14 for the people I'll be around. I mean, you'd be hard-  
15 pressed to find an elite runner over one hundred and fifty  
16 pounds. I want them to -- I want them to have a good  
17 experience on it."

18 Q. And Special Agent Arcari, what does  
19 two hundred mean in this context?

20 A. Milligrams.

21 Q. Okay. And what's -- what does Freek  
22 say next?

23 A. "With that said, Bill, if it's making  
24 any more work for you then, two -- two hundred and fifty  
25 milligram is fine. I just want to try to show the guys

1           there's a reliable source out there and they don't have to  
2           roll the dice on shady internet sites or run a ridiculous  
3           amounts of Clenbuterol and T3 Cytomel and risk thyroid  
4           damage."

5                           Q.    Did -- and then what did Freek say  
6           next?

7                           A.    "I just got an email from U.S.P.S.  
8           saying a label was created. You work fast my friend, ha-  
9           ha."

10                          Q.    And is that a shipment to David Freek  
11           that we looked at earlier this morning on new data on or  
12           about November 13th of 2018?

13                          A.    Yes it is.

14                          Q.    So at the -- following the next page,  
15           what is -- let's take a look at the top of the page. What  
16           was SimCare's response on November 13th in the middle of  
17           the page?

18                          A.    "Okay, I'll send a bunch of two  
19           hundreds easier to make."

20                          Q.    And then on the following day at the  
21           top of the page on November 14th of 2018 what did SimCare  
22           write to David Freek?

23                          A.    "Shipping two hundred -- two -- two  
24           hundred milligram caps this a.m. with some small bags. Do  
25           you have a color printer? Can send you a P.D.F. of labels

1 to print on fifty-six sixty Avery labels. Thought customs  
2 might choke on a D.P.N. info." Signed, Bill.

3 Q. And what does that mean customs might  
4 choke on D.P.N. info?

5 A. I'm sure it's a typo of D.N.P. and  
6 that it's not being shipped as yellow pigment twelve. So.

7 Q. And how does Freek reply to SimCare?

8 A. "Sounds good. I'll keep track of who  
9 I give them to and how many."

10 Q. And directing your attention then to  
11 -- to One sixty. As David Freek and Merlino continue to  
12 communicate about his shipping D.N.P. for human  
13 consumption into Canada how does Freek respond to  
14 Merlino's plan to ship the caps and the Avery labels on  
15 November 14th, 2018?

16 A. He writes "perfect, thanks Bill. I do  
17 have a color printer both at my office and at home.  
18 Sending the P.D.F. is definitely the way to go. I'm sure  
19 I can track down sticky labels around the office here for  
20 them too. I'll send you a pic when I print them and put  
21 them on the bags. I got an email from a couple of guys on  
22 the North Muscle Forums this morning asking if the site I  
23 told them about was the same SimCare eBay seller. I think  
24 the word is getting out which is great. I'd say you'll  
25 get an order or two from them today." Signed Dave.

1 Q. And based on your review, Special  
2 Agent Arcari of the simcare@gmail.com account was David  
3 Freek write -- did Merlino get orders shortly after these  
4 email exchanges?

5 A. Yes, he did.

6 Q. So let's take a look at Government's  
7 Exhibit One six two. What's the date of this email?

8 A. The date is November 12th, 2018.

9 Q. And what's the subject of this email?

10 A. Home use fertilizer.

11 Q. And what does the customer say to  
12 SimCare?

13 A. He writes, "Dave sent me A.D.M. with  
14 your email simcare@gmail.com and website fortissupply.com.  
15 I'm currently -- currently living in Alaska and looking  
16 for a personal-use fertilizer. What is the process for  
17 purchasing? Thanks for your help, Justin."

18 Q. And is -- is the email address  
19 associated with Justin is that -- is that an account that  
20 we looked at this morning as having made purchases from --  
21 of D.N.P. from Merlino?

22 A. Yes, it is.

23 Q. So let's take a look at the next page  
24 one six three. Directing your attention to November 14th,  
25 2018. At the bottom of the page there's an email from

1 Agro Fortis Supply merlin@acm.org. to a Hello Jason Epps.

2 A. Correct.

3 Q. What's the response in the middle of  
4 the page at seven-twenty p.m. on November 14th, 2018?

5 A. "Thanks, Dave sent me your way. I  
6 hope this helps my plants, Jason."

7 Q. And at the top of the page on this  
8 thread what is the subject?

9 A. Agro Fortis Supply order confirmation  
10 pound R one six seven six eight four two nine eight.

11 Q. Who's the email from?

12 A. It is from Jason Epps.

13 Q. Who's the email to?

14 A. It's to SimCare.

15 Q. And what's the date?

16 A. 11/15/2018.

17 Q. And who does this customer C.C. in --  
18 in his communications with Merlino?

19 A. David Freek at dave\_m56@hotmail.com.

20 Q. Okay. Let's take a look at  
21 Government's Exhibit One six four. Who's this email from?

22 A. This email is from Michael Murphy.

23 Q. And what's the date?

24 A. 11/24/2018.

25 Q. Who is it to?



1 A. To simcare@gmail.com.

2 Q. Okay. Is -- is Michael Murphy a  
3 customer name that we looked at this morning on your  
4 summary --?

5 A. Yes, it is.

6 Q. And what does this customer say to  
7 SimCare?

8 A. "We have done business before but I  
9 could no longer find you. Dave sent me also."

10 Q. Let's take a look at Government's  
11 Exhibit One six five. What's the subject of this email?

12 A. Subject is Dave sent me.

13 Q. And what's the date?

14 A. 11/28/2018.

15 Q. Who's the email from?

16 A. It's from Robert Levy.

17 Q. And is that a customer that you  
18 identified this morning on your D.N.P. summary charge?

19 A. Yes, it is.

20 Q. Let's take a look at the content of  
21 this email.

22 A. He writes "hi, I'm interested in  
23 D.N.P. crystal two hundred milligram inside twenty-five  
24 capsules. How much? Dave sent me from Enhanced Athlete  
25 Forums. Thank you so much."

1 Q. Let's take a look at Government's  
2 Exhibit One six six. Now directing your attention to the  
3 bottom of the thread. What's the date of this email?

4 A. December 1st, 2018.

5 Q. Okay. And what's the content of this  
6 email.

7 A. "Hi, I was told by Dave to send you an  
8 email. I am looking to buy some fertilizer. I am from  
9 the U.K. so if you can ship there, that would be great.  
10 Kind regards, Miho (phonetic spelling)."

11 Q. And what's the response from SimCare  
12 to that request?

13 A. Unfortunately not, sorry.

14 Q. And what was the status of -- of  
15 D.N.P. on eBay in the U.K. at that time?

16 A. It was banned.

17 Q. Okay. And what about shipping into  
18 the U.K. at that time?

19 A. I believe it was illegal.

20 Q. Let's take a look at Government's One  
21 six seven. What's the date of this email?

22 A. December 17th, 2018.

23 Q. And what's the subject?

24 A. Subject is D.N.P.

25 Q. And what is the request?

1                   A.    "Hello, I was interested in getting  
2                   D.N.P. Do you guys carry in two hundred and fifty caps?  
3                   I got info from E.A. Forum saying to mention Dave.  
4                   Thanks."

5                   Q.    Okay. So let's go back to  
6                   Government's Exhibit One six one. And on the second page  
7                   of Government's Exhibit One six one what is the email from  
8                   -- from SimCare to David Freek what's the date of this  
9                   email?

10                  A.    December 4th, 2018.

11                  Q.    And what is SimCare's question of  
12                  David Freek?

13                  A.    He asked "Nicholas DiMartino (phonetic  
14                  spelling), New Jersey, known to you? Strange order."  
15                  Thanks, Bill.

16                  Q.    And how does David Freek reply?

17                  A.    He states "he approached me on a  
18                  forum. I've never met him in person or have one on one  
19                  contact. But he seemed legit to me. What was strange  
20                  about the order -- what was strange about the order, it's  
21                  kind of weird he's from Jersey however, as that's where  
22                  the product is shipping from. Might be better just to  
23                  tell him to go elsewhere. What do you think? I can check  
24                  up on how he posts online on the forum, Dave."

25                  Q.    And turning back to the first page of

1 Government's One six one. On December 4th, 2018 what does  
2 SimCare write to David Freek?

3 A. "Ordered one hundred at ninety-eight.  
4 The extra -- the two extra at one dollar thirty-five cents  
5 plus ten dollar shipping seems strange. I'm going to send  
6 this to all new buyers."

7 Q. And then what is the text that SimCare  
8 tells David Freek that he sent him to all new buyers?

9 A. "It is the new account  
10 acknowledgement."

11 Q. And is that the new account  
12 acknowledgement that we looked at this morning that the  
13 F.D.A. agent received in response to his purchase?

14 A. Yes, it is.

15 Q. What's David Freek's response to this  
16 new account acknowledgement?

17 A. "I just vetted him online and he seems  
18 like he's very much legit. He uses A.A.S. and is on  
19 T.R.T. I'm sure he's fine. I looked at his last fifty  
20 posts. And Bill that's very -- that's a very good idea.  
21 No accountability then on your end and I mean, that's what  
22 it is advertised on the site. Legally you're in the clear  
23 then, know that anyone I send your way knows to ask is  
24 purchasing for fertilizer usage. Looks good to me."  
25 Signed Dave.

1 Q. Now Special Agent Arcari, during the  
2 course of your investigation, did you execute a search  
3 warrant on March 6th, 2019?

4 A. Yes, we did.

5 Q. And where -- what was the location of  
6 the search warrant?

7 A. The location was 4630 Somers Point  
8 Road, Mays Landing, New Jersey.

9 Q. Can you tell the Jury the -- the  
10 process to get a search warrant to -- to search the  
11 premises?

12 A. Sure. Just like the search warrant on  
13 the Google account Gmail same thing; a list of facts in a  
14 sworn affidavit goes before a judge who gives me the okay.  
15 And then you know we're okay to execute the warrant.

16 Q. Now, prior to executing a search  
17 warrant do you need to develop an operational plan?

18 A. Correct, yeah, as part of the  
19 operation we're going to develop an operational plan maybe  
20 surveil the location for the days leading up to it. But  
21 then that's also has to get approved by my headquarters.

22 Q. And for the search warrant on Somers  
23 Point Road in -- in this case what -- what personnel did  
24 you establish for this warrant?

25 A. Well, as -- as part of the planning

1 for the operation, it was brought to my attention by a  
2 colleague that I should contact the New Jersey State  
3 Police hazardous material unit and also the bomb unit  
4 given the volatility of D.N.P. So that's what I did. So  
5 along with agents from Homeland Security Investigations,  
6 Postal Inspection and F.D.A., the New Jersey State Police  
7 hazmat unit and bomb squad helped us execute the search  
8 warrant.

9 Q. Because particularly from the  
10 customer's information, you -- you knew that there were  
11 bulk quantities of D.N.P. designated for that residence.  
12 Is that's right?

13 A. That's correct.

14 Q. And how did you execute the warrant?

15 A. So the morning of -- we staged at a  
16 location until you know all personnel were ready. We  
17 drove into the location. I and one or two other agents  
18 knocked and announced. He didn't come to the door. So I  
19 felt, given the circumstance it prudent that I call him on  
20 his cellphone. I called, he answered, came to the door.  
21 Once we made contact with him, the hazardous material unit  
22 went in and cleared the site.

23 Q. And during the execution of the  
24 warrant did -- did you seize physical evidence?

25 A. Yes, we did.

1 Q. And what -- what type of physical  
2 evidence did you seize?

3 A. We seized bulk D.N.P., thousands of  
4 empty capsules, thousands of already completed capsules,  
5 fill trays, some documents were found as well. I think  
6 that's probably most of it.

7 Q. And the bulk D.N.P. that was seized in  
8 the case was that maintained in -- in your evidence  
9 possession or was that ever maintained elsewhere?

10 A. No, that was -- we signed over custody  
11 to the New Jersey State Police and they transported to  
12 their bomb-unit shelter which is where it was housed.

13 Q. Okay. So let's take a look at  
14 Government's Exhibits One hundred -- One thirty-six. Are  
15 these pictures that were taken during the course of the  
16 execution of the search warrant?

17 A. That's correct. Anytime we execute a  
18 warrant before any searching is done, we'll have personnel  
19 go through, photograph labels, photograph all the rooms so  
20 that, you know, we can show in court this is how it looked  
21 before we got in. And then we'll take photos after we  
22 leave as well. When we see some evidence that we feel is  
23 important, we'll photograph it in place. And then all  
24 that stuff's kept by me.

25 Q. And directing your attention to

1 Government's Exhibit Ninety-nine. What is that?

2 A. Ninety-nine is a list of the rooms  
3 that we labeled. Again, as they're taking photographs and  
4 labeling the rooms a log is kept.

5 MS. BURNES: The government moves admission  
6 of Government's Exhibits Ninety-nine through One thirty-  
7 six.

8 MR. GAMBURG: No objection, Your Honor.

9 THE COURT: Admitted.

10 BY MS. BURNES: (Cont'g.)

11 Q. Okay. So let's take a look at  
12 Government's Exhibit One hundred. Can you tell the Jury  
13 what's depicted there?

14 A. Yes. One hundred is a picture of a  
15 desk with computers in an office that was in the basement  
16 of the home.

17 Q. And directing your attention then to  
18 the center of the picture below -- below the middle set of  
19 monitors. What's depicted there?

20 A. Those are confirmation receipts of  
21 orders taken by Fortis Supply. I guess that probably  
22 weren't filled out yet.

23 Q. And did you seize these documents in  
24 the course of your search?

25 A. Yes, we did.



1 Q. Showing you what's been identifying --  
2 for identification only One thirty-A and B through One  
3 forty-four. Do you want to just take a look in your  
4 binder? Are those copies --

5 A. Yes, those were --.

6 Q. -- of the -- of the documents that  
7 were placed on that desk?

8 A. Yes.

9 MS. BURNES: And the -- well, the  
10 government moves admission of One thirty-A and -B.

11 MR. GAMBURG: No objection.

12 THE COURT: Admitted.

13 MS. BURNES: And I'm sorry, through One --  
14 so then and also One thirty-nine-A and -B through One  
15 forty-four.

16 MR. GAMBURG: No objection.

17 THE COURT: All admitted.

18 MS. BURNES: Okay. Now if we can publish  
19 the first document. Thank you. I'm going to approach  
20 with Exhibits One thirty-eight-AP, for physical copies of  
21 One thirty-eight BP and the -- the physical copies of the  
22 document records in Exhibits One thirty-eight through One  
23 forty-four.

24 BY MS. BURNES: (Cont'g.)

25 Q. So let's take a look at the -- at one

1           thirty-eight A and B. Can you remove them that -- from  
2           that Manila -- Manila envelope that we just put it into  
3           (unintelligible)? And can you tell the Jury what's --  
4           what's depicted on One thirty-eight-A and then the  
5           backside One thirty-eight-B?

6                     A. This is a shipping order -- confirmed  
7           shipping order from Agro Fortis Supply.

8                     Q. And One thirty-eight-A, who is the --  
9           what country is the shipping order to?

10                    A. New Zealand.

11                    Q. What is the product described as?

12                    A. Yellow pigment number twelve, sample,  
13           forty grams.

14                    Q. And who is the -- the shipper?

15                    A. Agro Fortis Supply.

16                    Q. So let's take a look at One thirty-  
17           eight-B. Is that on the back of the -- of One thirty-  
18           eight-B?

19                    A. (unintelligible) seven.

20                    Q. And what's depicted at One thirty-  
21           eight-B?

22                    A. Another order confirmation from Agro  
23           Fortis Supply.

24                    Q. And what's the -- what's the product  
25           being shipped?

1                   A.    Yellow pigment number twelve sample,  
2                   forty grams.

3                   Q.    Where is it -- what country is it  
4                   being shipped to?

5                   A.    New Zealand.

6                   Q.    And so holding in your hand you have  
7                   -- those are the physical copies of the records you seized  
8                   from that space in front of the computer. Is that right?

9                   A.    That's correct, yes.

10                  Q.    Let's take a look at One ninety-three  
11                  -- One thirty-nine-A. If you can just show it to the  
12                  Jury. And what's depicted at One thirty-nine-A?

13                  A.    It's an order confirmation from Agro  
14                  Fortis Supply.

15                  Q.    And what country is this order  
16                  confirmation addressed to?

17                  A.    Belgium.

18                  Q.    What's the product being shipped?

19                  A.    Yellow pigment number twelve sample  
20                  twenty-five grams.

21                  Q.    Now the paper that you're holding in  
22                  your hand, is that a, you know, regular eight-and-a-half  
23                  by eleven white sheet of paper?

24                  A.    Yes, it is.

25                  Q.    Okay. And what else is on that paper?

1 A. Just stained yellow from D.N.P.

2 Q. Let's take a look at One thirty-nine-  
3 B. What's depicted in One thirty-nine-B?

4 A. This again is an order confirmation  
5 from Agro -- Agro Fortis Supply showing 2,4-Dinitrophenol  
6 capsules, two hundred and fifty milligram, one hundred  
7 count.

8 Q. Okay. And so is -- does -- is this  
9 the same customer but a different description?

10 A. That's correct.

11 Q. Let's take a look at One forty-A and -  
12 B. What's depicted on One forty-A?

13 A. This is a shipping label from Agro  
14 Fortis Supply to a Richard in Owen Mills.

15 Q. Okay. And is this a Click-N-Ship  
16 label?

17 A. It doesn't appear to be.

18 Q. Okay. Is it a Pitney Bowes label?

19 A. It's from -- yes.

20 Q. Okay. And what's -- what's depicted  
21 on One forty-B?

22 A. It's another shipping label.

23 Q. Okay. Is this -- is this the same  
24 label as the first one, another copy of it?

25 A. Yes, it is.

1 Q. Okay. And -- and what color is One  
2 forty-B?

3 A. Stained yellow.

4 Q. And finally let's take a look at One  
5 forty-C. What's depicted at One forty-C?

6 A. This is a confirmation of an order  
7 from Agro Fortis supply with D.N.P. two hundred milligram  
8 capsules one hundred count for ninety-eight dollars and  
9 seventy-five cents.

10 Q. And who's the customer on One forty-  
11 six?

12 A. Name Richard in Owen Mills.

13 Q. Okay. So can you just pull together  
14 then are the -- is it the same customer One -- One forty-  
15 A, B, and C?

16 A. Yes, it appears to be.

17 Q. And let's take a look at One forty-one  
18 A and B. What's depicted at One forty-one A?

19 A. One forty-one-A is a person shipping  
20 label.

21 Q. Who's that -- who's that shipping to?

22 A. Indiana in Delray Beach.

23 Q. And who is it from?

24 A. Agro Fortis Supply at 4630 Somers  
25 Point Road, Mays Landing.

1 Q. And as we take a look at One forty-one  
2 B, what's depicted there?

3 A. One forty-one B is a confirmation of  
4 order from Agro Fortis Supply to Indiana in Delray Beach,  
5 listing D.N.P. two hundred milligram capsules fifty count,  
6 sixty-eight dollars and fifty cents.

7 Q. And so is that invoice at One forty-  
8 one B the same customer as the label at One forty-one A?

9 A. Yes, it is.

10 Q. And during the course of one of your  
11 purchases, did you receive an invoice that looks  
12 substantially similar to that form inside your package?

13 A. Yes, I did.

14 MS. BURNES: Your Honor, does the Court  
15 wish to take a break?

16 THE COURT: If this is a good time in the  
17 narrative then by all means.

18 MS. BURNES: Thanks.

19 THE COURT: All right. Jury, we'll take  
20 our mid-afternoon break now and we'll try to reconvene  
21 less than in ten minutes or so. All right.

22 THE COURT CLERK: All rise.

23 (Off the record; 14:57:56 to 15:18:58)

24 THE COURT: All right. Continue.

25 BY MS. BURNES: (Cont'g.)

1                   Q.    Special Agent Arcari, we were looking  
2                   at some physical documents you seized during the course of  
3                   the execution of the search warrant on March 6th of 2019.  
4                   Want to direct your attention to Government's Exhibit One  
5                   Forty-two A and B. And can you tell the Jury what's  
6                   depicted on these two documents?

7                   A.    Yes. One Forty-two A is a priority  
8                   shipping labeled from Agro Fortis Supply, 4630 Somers  
9                   Point Road in Mays Landing to a McLinda (phonetic  
10                  spelling) in Tucson. And One Forty-two B is a purchase  
11                  confirmation from our Agro Fortis Supply to McLinda in  
12                  Tucson. Order was two -- D.N.P. two hundred milligram  
13                  capsules, one hundred count for one hundred ninety-seven  
14                  dollars and fifty cents.

15                  Q.    And the date on that order, it has a  
16                  place on -- on the right-hand side. What was the date of  
17                  that order?

18                  A.    The date is March 6th, 2019.

19                  Q.    Okay. And that's the day of the  
20                  search?

21                  A.    That's correct.

22                  Q.    Now, the -- the customer named  
23                  McLinda, is that a -- a name that you identified in other  
24                  records earlier this morning?

25                  A.    I don't recall.

1 Q. Okay. And let's take a look at  
2 Exhibit One Forty-three A and B. What's depicted there?

3 A. This is a -- again, another shipping  
4 label from Agro Fortis Supply at 4630 Somers Point Road in  
5 Mays Landing, New Jersey to a Marco (phonetic spelling) in  
6 Westport.

7 Q. And what's the -- what's depicted in  
8 B?

9 A. B is a order confirmation from Agro  
10 Fortis Supply to Marco in Westport listed D.N.P. two  
11 hundred milligram capsules, one hundred count for ninety-  
12 eight dollars and seventy-five cents.

13 Q. And when was this order to -- from  
14 Marco, when was this order placed?

15 A. Also March 6th, 2019.

16 Q. Okay. And let's take a look at  
17 Government's Exhibit One Forty-four.

18 A. One Forty-four is an order  
19 confirmation from Agro Fortis Supply to a Curling  
20 (phonetic spelling) in Victorville. Order date is  
21 02/21/2019. The order is for D.N.P. 2,4-Dinitrophenol  
22 capsules, two hundred milligram, one hundred count for  
23 ninety-eight dollars and seventy-five cents.

24 Q. Okay. And then -- and the document  
25 you're holding in your hand, is that a regular eight-and-



1 a-half by eleven piece of paper?

2 A. Yes, it is.

3 Q. Okay. And is it originally white?

4 A. Yes.

5 Q. And can you, for the record, what --  
6 what color is the document in your hand?

7 A. It's tainted yellow.

8 Q. Let's take a look then, at -- go back  
9 to Government's Exhibit One hundred. So the envelope --  
10 the labels and invoices that -- that you just testified  
11 about, they were recovered from -- from this location in  
12 the office?

13 A. Correct.

14 Q. Okay. And let -- let's take a look at  
15 Government's One Fifty-one. Did you -- did you recover  
16 other items of evidentiary value from the office?

17 A. Yes, we did.

18 Q. I'm sorry. One zero one. Can you  
19 describe for the grand (sic) jury what's depicted in  
20 Government's One o one?

21 A. Sure. Those are liquid containers.  
22 We think orange juice containers filled with D.N.P.  
23 capsules.

24 Q. Let's take a look at One o two.

25 A. Again, those are the same two bottles.

1 As you see, one's labeled D.N.P. two hundred fifty  
2 milligrams and the other is labeled D.N.P. two hundred  
3 milligrams.

4 Q. And where were those two bottles  
5 recovered from?

6 A. They were in Room Q, that office from  
7 that desk drawer.

8 Q. Okay. Now, those items of physical  
9 evidence, are those among the items that were kept in  
10 F.D.A. custody or were they kept in New Jersey custody?

11 A. Yeah. They were transferred into the  
12 custody of the hazmat unit, New Jersey State Police.

13 Q. Let's take a look at Government's One  
14 o three. Are those the same two containers depicted at  
15 the top of One o Three?

16 A. Yes, they are.

17 Q. Now, let's take a look at Government  
18 One o Four. Can you tell the Jury what's depicted in this  
19 picture?

20 A. This is a picture of Room M, which we  
21 labeled as the lab.

22 Q. And when you say Room M, can you just,  
23 again, explain to the Jury what it is you do when you --  
24 when you make an operation plan check -- you do a search  
25 on?

1                   A.    Right.  So again, when we go in,  
2                   before we start searching, touching anything, we hang  
3                   labels, take photographs.  So this is just a photograph of  
4                   -- from the out, you know, outside of Room M into --

5                   Q.    Okay.

6                   A.    -- into the room.

7                   Q.    So moving into then, let's take a look  
8                   at Government's One o five.  What does this depict?

9                   A.    Just another perspective of an outside  
10                  shot of Room M from the other side, looking left into the  
11                  room.

12                  Q.    Let's take a look at Government's One  
13                  o Six.  Can you tell the Jury what's depicted in  
14                  Government's One o Six?

15                  A.    One o Six was a shelf on, I believe,  
16                  the right side of the room when you walked in.  On top, it  
17                  appears to be a pill press and underneath you'll see  
18                  shipping material.  You got the U.S. postal priority  
19                  mailing envelopes, and then you have other padded bubble  
20                  envelopes there as well.

21                  Q.    Okay.  And let's take a look at the  
22                  top of the photo.  It's -- it's hard to see in this  
23                  photograph.  Can you -- can you describe to the Jury, the  
24                  -- the walls in -- in Room M?

25                  A.    Yeah.  As you can see, it's just white

1           pegboard from the outside pictures and just the, you know,  
2           given the use of D.N.P. in that room has stained all the  
3           walls yellow.

4                       Q.    Let's take a look at Government's  
5           Exhibit One o Eight.

6                       A.    One o Eight is just another shelf.  On  
7           the right there is an ice crusher.  Not sure as to why  
8           it's in there.  In the middle there is a blender and then  
9           underneath you'll just see, you know, some white powder,  
10          probably filler.

11                      Q.    And I inadvertently skipped  
12          Government's Exhibit One o seven.  Let's take a look at  
13          that.

14                      A.    That's just a close-up of the shelf  
15          with the shipping materials.

16                      Q.    All right.  Moving forward.  Let's  
17          take a look at Government's One o nine.  And can you  
18          explain to the Jury where -- where this was in Room M?

19                      A.    Right.  So this is as you're walking  
20          into the room to the, you know, right corner, you see a --  
21          a wash sink there, a strainer hanging from the wall.  And  
22          then you just kind of see some empty orange juice bottles  
23          there, and still a lot of yellow tint on the walls.

24                      Q.    So let -- let's take a look at the --  
25          at the top of this picture, if we can enlarge it.  Can you

1 describe the -- the color of the walls here Special Agent  
2 Arcari?

3 A. Again, you have that white pegboard,  
4 which is stained yellow. And you can see some of the  
5 plumbing there, pipes also stained yellow.

6 Q. And then to the -- to the left of the  
7 sink, well, on the front of the sink, what's hanging  
8 there?

9 A. That appears to be a rag stained  
10 heavily in yellow.

11 Q. Let's take a look to the left of the  
12 sink. What's depicted there?

13 A. That is a scale. And to the left of  
14 that is a couple other strainers and pill trays.

15 Q. Behind the scale, what are those empty  
16 containers?

17 A. Empty -- empty orange juice  
18 containers.

19 Q. And are they of the consistent size of  
20 the seized D.N.P. that you got from the office?

21 A. Yes, they are.

22 Q. Okay. Let's take a look at  
23 Government's Exhibit One ten. And if we can, let's --  
24 let's take a look at the top half of the photo. Special  
25 Agent Arcari, what's -- what's depicted here?

1           A.    Again, you have the white pegboard  
2           stained heavily in yellow. In the middle of there is an  
3           industrial hood vent. Beneath there, you have empty like  
4           cereal containers, those all contained half splits. You  
5           have the body, then you have the cap. The body's the  
6           bigger part of the capsule, separated.

7           And then in the middle there, appears to be  
8           maybe like corn starch. We -- we found corn starch on  
9           some of the shelves and those two middle containers there.  
10          A big chafing tray like you would see in a catering hall,  
11          and then you got the strainers again and the pill presses.

12          Q.    Okay. And to the far right, the lower  
13          part of the -- of the -- part of the picture we're looking  
14          at, is that the scale that we looked at in the prior  
15          picture?

16          A.    Yes.

17          Q.    So we're just moving to the left of  
18          the scale around the room?

19          A.    Correct. Moving right to left.

20          Q.    And if -- if we go back in One ten,  
21          let's look at the bottom half of the picture. What's  
22          depicted on the floor?

23          A.    Bottom of the floor is just white  
24          powder mixed with yellow powder. You saw several caps,  
25          you know, halves of caps on the floor.

1 Q. Okay.

2 A. Just, you know, pretty dirty.

3 Q. Let's -- let's take a look at  
4 Government's Exhibit One eleven. And does this follow  
5 from the prior photo a -- a picture of the -- of the  
6 laptop that you just described?

7 A. Correct. We're moving right to left  
8 in the room. Again, the white pegboard stained in yellow.  
9 We have a couple strainers hanging from the wall there.  
10 We have the computer there in the middle.

11 Q. And if we could just take a look at  
12 the -- at the laptop. Was the laptop on and open when you  
13 arrived?

14 A. Yes, it was.

15 Q. And let's -- let's pull back out.  
16 Take a look at Government's Exhibit One twelve. Can you  
17 tell the Jury what appears in Government's One twelve?

18 A. Sure. We have a -- a trash can there  
19 on the right. And on that shelf is Ziploc bags, rubber  
20 gloves, on the bottom -- middle shelf there are  
21 containers, like there is the cornstarch there. I can't  
22 make out what the other things are but --.

23 Q. And directing your attention then back  
24 to the top of the shelf. What's -- what's depicted up  
25 there?

1                   A.    Some bowls, couple funnels there on  
2                   the right-hand side, measuring cup.

3                   Q.    And pulling back out and directing  
4                   your attention to the bottom shelf.  What's depicted  
5                   there?

6                   A.    Those are more of the encapsulating  
7                   trays.

8                   Q.    So if we pull back out, let's take a  
9                   look at Government's Exhibit One thirteen.

10                  A.    That's a close-up of a pill press.

11                  Q.    Okay.  And Government's Exhibit One  
12                  fourteen.

13                  A.    There was the -- the blender that we  
14                  saw earlier in the picture.

15                  Q.    Okay.  And what's it resting on?

16                  A.    A -- looks like a, one of those paper  
17                  cutting boards.

18                  Q.    Okay.  Let's take a look at  
19                  Government's One fifteen.

20                  A.    Those were the strainers that I  
21                  pointed out earlier on top of the encapsulation trays.

22                  Q.    Okay.  So to the bottom right of  
23                  Government's One fifteen, is that the scale that you  
24                  previously talked about?

25                  A.    Yes, that's a close-up of the scale.



1 Q. And then, is this a close-up of the  
2 strainers and the -- the pill, the capsule trays that you  
3 just described?

4 A. Yes.

5 Q. On the top left of Government's One  
6 Fifteen, what's -- what's depicted in the plastic  
7 containers?

8 A. The -- that's a close-up of the empty  
9 pills, empty capsules.

10 Q. And moving to Government's One  
11 Sixteen. What's depicted there?

12 A. Again, another close-up of the empty  
13 capsules.

14 Q. So moving from -- from left to right.

15 A. Left to right.

16 Q. What -- what type of plastic  
17 containers are these?

18 A. Looks like a Rubbermaid cereal  
19 container.

20 Q. And what's -- what color are the  
21 capsule containers start -- going just from left to right?

22 A. From left to right, we have a  
23 container with the red caps. Next to that is the  
24 container with green caps. In the middle there, two  
25 unknown substances and then, the two containers on the

1 right contain white caps.

2 Q. Okay. So before we move on, can we  
3 just take a look back at Government's One o two. These  
4 are the filled capsules that you seized from the office?

5 A. That's correct.

6 Q. Okay. And can you just describe in  
7 Government's One o two, what's depicted in the left  
8 container versus the right container?

9 A. In the left container are the white  
10 and green caps -- .

11 Q. And what does the label say on that?

12 A. The label says D.N.P. two hundred  
13 fifty milligram.

14 Q. And how about on the right-hand  
15 container?

16 A. On the right hand is the red and white  
17 caps labeled D.N.P. two hundred milligrams.

18 Q. Okay. So moving on, let's take a look  
19 at Government's Exhibit One seventeen.

20 A. That's a close-up picture of that  
21 catering tray that we saw earlier, spoon inside. Looks  
22 like maybe a mix of D.N.P. and whatever filler is used.  
23 And then around the out --

24 Q. Okay.

25 A. -- around the outside, you'll see what

1 looks to be completed caps, red and white, red and white.  
2 And then, you have a couple halves of the green and red up  
3 top there on the left.

4 Q. Okay. So if we go back to  
5 Government's One Sixteen. I'm going to approach with One  
6 Sixteen P. Can you tell the Jury what -- what One Sixteen  
7 P is?

8 A. One Sixteen P is the combination of  
9 the red container and the green container on the left, and  
10 the white container holding the two on the --.

11 Q. Okay. And are those -- are those caps  
12 empty?

13 A. Yes, they are.

14 Q. Okay. And are -- are those -- One  
15 Sixteen P, is that -- is that physical evidence that was  
16 maintained at -- at the F.D.A. evidence custodian?

17 A. Yes, it was.

18 Q. Okay. I'm going to approach to take  
19 that back.

20 Continuing through, we looked at One  
21 seventeen, let's take a look at One eighteen. And this is  
22 that same laptop that -- that -- that you just testified  
23 about.

24 A. Correct. Yeah. It's a close-up of  
25 the laptop. And as you see nine thirteen in the a.m. on

1 March 6th, day of the warrant.

2 Q. Let's take a look at Government's One  
3 nineteen.

4 A. There, you see the shelf, you have  
5 some just Ziploc baggies up there, rubber gloves. Like I  
6 mentioned before, the cornstarch and other just like  
7 household products there. Below there, you'll see the  
8 encapsulation trays.

9 Q. Thank you. Okay. Showing you what's  
10 been marked as Government's One nineteen P. Can I leave  
11 it here or shall I --?

12 THE COURT: Yes.

13 MR. BURNES: Your Honor, I'm concerned  
14 about the microphones.

15 THE COURT: Whatever works.

16 MS. BURNES: If I stay here, is that okay?

17 THE COURT: Whatever works. Whatever  
18 works, Counsel.

19 MS. BURNES: Then -- then, Special Agent  
20 Arcari, it's okay if I just hand you --?

21 BY MS. BURNES: (Cont'g.)

22 Q. So collectively marked as One Nineteen  
23 P, can you -- can you tell the Jury what these are?

24 A. Yeah. These are the encapsulation  
25 trays. You have a bottom and like I say, the body is the

1 bigger part of the cap, goes in the bottom. And then,  
2 there is like a -- a middle piece you put on, on top of  
3 that. And you put whatever substance you want in there.  
4 Here, D.N.P., kind of shifted into that bottom.

5 Then, you put the -- the caps, which is the  
6 smaller part of the capsule into like a separate tray.  
7 Fits over that, press down until you hear like a clicking.  
8 So you just like that's on springs and then, flip it over  
9 and you have capsules.

10 Q. And the trays that you just described  
11 that were -- that we're looking at here. The -- there's  
12 this one size tray with how many -- how many pills?

13 A. Mind if I count real quick? Now, this  
14 -- this tray would probably make a hundred.

15 Q. Okay. And that's -- and that's based  
16 on the number of holes that are in the tray?

17 A. Yeah.

18 Q. Okay.

19 A. Ten up -- ten up, ten across.

20 Q. Now, in addition to these trays, can  
21 you tell the Jury about these trays, also designated  
22 collectively as One Nineteen P?

23 A. Same thing, just a bigger version.  
24 You have a bottom with the bodies filled with powder. You  
25 have your top piece that the caps go on. Put it on top.

1 Squeezed together and capsules are made.

2 Q. Now, with respect to the tray that  
3 we're looking at here. Can you describe for the Jury,  
4 what, if anything, is depicted on the tray?

5 A. As you can see this trays been used,  
6 tinted yellow and there's still a lot of residual powder  
7 on there from the D.N.P.

8 Q. And were there other trays seized  
9 together with the -- with the trays that you just  
10 described?

11 A. Yeah. I believe that -- I believe  
12 that's all of them.

13 Q. Yeah.

14 A. Yeah.

15 Q. Special Agent Arcari, this banker's  
16 box, this is your evidence box, isn't it?

17 A. That's a brand-new evidence box.

18 Q. Okay. What color is the brand-new  
19 evidence box?

20 A. It was white. Now, tinted yellow.

21 Q. I'm just holding. Let -- let the  
22 record reflect I'm holding that for the Jury. Let's move  
23 on to Government's Exhibit One Twenty. What's depicted in  
24 Government's One Twenty?

25 A. Again, it's close-up of the floor. As

1           you can see, different powder on the floor. Appears to be  
2           a green, white filled cap, and then you have  
3           (unintelligible) all over.

4                       Q.    And let's take a look at Government's  
5           One twenty-one.

6                       A.    There is an empty bottle of the Sigma-  
7           Aldrich D.N.P. That's a one kilo container. And I  
8           believe it was taken out of the trash can that we saw  
9           earlier next to the computer.

10                      Q.    Okay. And the -- the label has the  
11           backside of Aldrich. It says 2,9 (sic) Dinitrophenol.  
12           And are the pictorials depicted on the -- on the bottom of  
13           that label?

14                      A.    Yes, you have a skull and crossbones,  
15           a picture of something in a chest. I'm assuming, you  
16           know, inhaling and I can't make out what that third one  
17           is.

18                      Q.    Okay. And --?

19                      A.    Looks like killing a tree or  
20           something.

21                      Q.    Let's -- let's take a look at  
22           Government's One twenty-two.

23                      A.    There, we have the right side as you  
24           walk in where the ice crusher and the blender were  
25           sitting. And above that on the peg board are the labels

1           that you saw earlier on the baggies.

2                       Q.    So let's -- let's, if we can, enlarge  
3           the top half of Government's One twenty-two. And can you  
4           describe what's -- what's depicted on these various  
5           labels?

6                       A.    Sure. It looks to be the, you know,  
7           the 2,4-Dinitrophenol labels with --.

8                       Q.    And are -- are some of the labels  
9           blank and some of them have writing on them?

10                      A.    Yes.

11                      Q.    Okay. And to the -- to the bottom,  
12           right-hand side of the page, is there a distinctive yellow  
13           coloring that's consistent with the M.S.D.S. forms that we  
14           looked at earlier?

15                      A.    Yes. The bottom right there above the  
16           ice crusher, I could see the colored diamond there and  
17           (unintelligible).

18                      Q.    So let's take a look at Government's  
19           Exhibit One twenty-three. Is this a close-up photo of the  
20           labels you just described?

21                      A.    Correct. Closeup label, 2,4-  
22           Dinitrophenol powder, Sigma-Aldrich USA ninety-nine  
23           percent SA. And you got a ten and a thirty like a box,  
24           maybe to check, and then an empty spot there to mark  
25           grams, pre-order [www.fortissupply.com](http://www.fortissupply.com).



1 Q. Let's take a look at Government's One  
2 twenty-four. This is a close-up of one of the items that  
3 was depicted in the blurred photo?

4 A. Yes, it's as you see, Agro Fortis  
5 Supply, L.L.C. with the website, [www.fortissupply.com](http://www.fortissupply.com),  
6 email [sales.fortissupply.com](mailto:sales.fortissupply.com). Thank you for your order.  
7 Please email if you have any questions, M.S.D.S. is  
8 available on site.

9 Herbicide dye preservative, not for human  
10 consumption and a picture of yellow powder depicted on  
11 here.

12 Q. And One twenty-five, what's depicted  
13 here?

14 A. One twenty-five is that material  
15 safety data sheet for 2,4-Dinitrophenol.

16 Q. Okay. Now, we looked at the pictures  
17 of the labs. We looked at the pill presses. We looked at  
18 the labels and we looked at the cereal containers. All of  
19 those items were contained in one room. Is that right?

20 A. That's correct.

21 Q. Okay. So I want to move on to another  
22 room. Let's take a look at Government's Exhibit One  
23 twenty-six. And is -- is this a room, a -- a different  
24 room in -- in the basement of the Defendant's house?

25 A. Correct. This room was adjacent to

1 the lab Room M. Basically, if you turned out, walked out  
2 of Room M, you'd walk straight into Room P. And that's  
3 where we found empty caps. Some -- you see some bubble  
4 wrap over there to the right, for packing.

5 Q. Okay. And showing you what's been  
6 marked as Government's One twenty-six P. Are these the  
7 empty white capsules that are depicted --

8 A. Yes, they are.

9 Q. -- in the photograph?

10 A. Yes. Yes, clear gel caps.

11 Q. So let's take a look at One twenty-  
12 seven P -- One twenty-seven. What's depicted here?

13 A. Here, opening up a file cabinet  
14 drawer, we found two bags of white caps and then a bag of  
15 red caps.

16 Q. Okay. And where is this drawer in  
17 relationship to where the -- the white, the clear gel cap  
18 that we just looked at?

19 A. Below.

20 Q. Okay. So I'm approaching with three  
21 bags that are collectively marked One twenty-seven P. Can  
22 you tell the Jury what they are?

23 A. Yeah. Appeared -- the bags that we  
24 seized from the drawer in Room P, you have the white  
25 halves, and then here is the third bag of the reds.

1 Q. Let's take a look at One twenty-eight.  
2 Can you tell the Jury what's depicted there?

3 A. Sure. I believe, it's the next drawer  
4 down. This looks to be three bags of red caps.

5 Q. Handing you what's been marked as One  
6 twenty-eight P collectively. Let's take a look. Does the  
7 picture contain a dent on one of the bags?

8 A. Yeah. Now, I look at, it looks like  
9 it's folded in half. So two bags of red caps, empty.

10 Q. Okay. Taking a look at your labels.

11 A. Uh-huh.

12 Q. Do you need the box as well, or are  
13 you satisfied that those are the two bags --

14 A. No, these are the two.

15 Q. -- you seized from that -- that  
16 drawer?

17 A. Yes.

18 Q. Okay. And then let's take a look at  
19 One twenty-nine. What's depicted there?

20 A. Again, we have, appears to be two bags  
21 of clear gel caps.

22 Q. And I'm approaching with what's been  
23 marked as One twenty-nine P collectively.

24 A. Yeah. These are the same bags that  
25 are depicted in the picture.

1 Q. And these two bags, are they recovered  
2 from the same file cabinet as the other capsule?

3 A. Correct. Same file cabinet in Room P.

4 Q. Now, did you recover bulk D.N.P.  
5 during the course of the search?

6 A. Yes, we did.

7 Q. And where was that housed?

8 A. It was housed in the garage in a gun  
9 safe.

10 Q. Directing your attention to  
11 Government's Exhibit One Thirty. What's depicted there?

12 A. That is the gun safe that was located  
13 in the garage.

14 Q. And turning your attention to  
15 Government's One Thirty-one, what's depicted there?

16 A. In it, I mean, you see guns, but to  
17 the bottom left in the brown bottles with the red caps,  
18 that is the one kilo size of Sigma-Aldrich D.N.P.

19 Q. And let's take a look at Government's  
20 One thirty-two.

21 A. Yeah. That's a just a close-up photo.  
22 Again, we put into evidence. We'll take a photo in place.  
23 That's just a close-up there. You see the brown bottle,  
24 Aldrich written on it, red cap.

25 Q. And let's take a look at One thirty-

1 three.

2 A. Again, just above the two we just  
3 looked at, two more laying on the side there, you see same  
4 red cap, brown bottle.

5 Q. And directing your attention to One  
6 thirty-four, what's depicted here?

7 A. That's all in all, in that gun safe,  
8 there were seven kilo bottles of Sigma-Aldrich D.N.P.

9 Q. Let's take a look at One thirty-five.  
10 What's depicted here?

11 A. Close-up of the one-kilogram bottle of  
12 Sigma-Aldrich Dinitrophenol.

13 Q. And what's depicted on One thirty-six?

14 A. Just turn the bottle a little bit.  
15 Just the contents of that bottle contains 2,4-  
16 Dinitrophenol, light sensitive, heat sensitive, safety  
17 data sheet is available for R&D use only, not for drug,  
18 household or other uses.

19 Q. Was -- after this evidence was seized,  
20 who did you turn this evidence over to?

21 A. Yeah. Again, for safety measures, we  
22 turned custody over to the New Jersey State Police bomb  
23 squad.

24 Q. Special Agent Arcari, were -- in -- in  
25 addition to the U.C. buys, was there D.N.P. evidence that

1           was sampled from your seizure and -- and sent to the  
2           F.C.C. laboratory for sampling?

3                   A.    Yes, we -- the two orange juice  
4           bottles that you saw previous, we took a couple caps out  
5           of each one and we sent that off to our chemistry center  
6           for evaluation. All pills came back containing D.N.P.

7                   Q.    So directing your attention to  
8           Government's Exhibit Eleven, which is further marked as  
9           Government's Exhibit A through E. These were the subject  
10          of a stipulation earlier this morning. Are these the --  
11          the lab reports containing the results and conclusions of  
12          the U.S. Food and Drug Administration's Forensic Chemistry  
13          Center?

14                   A.    Yes.

15                   Q.    Okay. And so what's -- directing your  
16          attention to Government's Exhibit Eleven E, what's  
17          depicted there?

18                   A.    You said E. That's an analysis report  
19          of the D.N.P. samples from the search warrant.

20                   Q.    Okay. And how were the samples from  
21          the search warrant and from the purchases from Defendant  
22          Merlino, how were those samples sent to the lab?

23                   A.    So we had an issue. Normally, we  
24          overnight U.P.S., anything you would send to the lab and  
25          with respect to D.N.P., they would not allow us to

1           overnight it due to the hazards.

2                       So I essentially took samples, drove  
3           halfway across the state to our Pittsburgh agent, who took  
4           it to another agent located in Ohio, because our Forensic  
5           Chemistry Center is in Cincinnati.

6                       Q.    And Government's Exhibit A through D,  
7           do they represent the results of the undercover -- the  
8           results of the tests of the pills that were purchased that  
9           you testified about earlier this morning?

10                      A.    Yes.

11                      MS. BURNES:   Okay.   One moment, Your Honor.

12                      THE COURT:   Uh-huh.

13                      MS. BURNES:   Your Honor, the Government  
14           formally moves admission to -- to Government's Exhibit A  
15           through E, which have been the subject of a stipulation  
16           and of testimony?

17                      MR. GAMBURG:   No objection.

18                      THE COURT:   Admitted.

19                      MS. BURNES:   And I have no further  
20           questions at this time.

21                      THE COURT:   All right.

22                      MR. GAMBURG:   May I, Your Honor?

23                      THE COURT:   We'll just give Ms. Burnes a  
24           chance to clear the field and then you may.

25                      MR. GAMBURG:   So --.

1 MS. BURNES: Sorry.

2 MR. GAMBURG: No, that's okay. So --.

3 MS. BURNES: Okay.

4 CROSS EXAMINATION

5 BY MR. GAMBURG:

6 Q. You're the case agent, correct?

7 A. That's correct, sir.

8 Q. You're familiar with what the

9 Defendant's charged with, correct?

10 A. Yes.

11 Q. He's not charged with importing or  
12 exporting, right?

13 A. That's correct.

14 Q. He's charged with mislabeling,  
15 correct?

16 A. Misbranding, I believe. Yeah.

17 Q. That's correct. So in G One thirty-  
18 six, may we put that up, please? This is the -- what you  
19 described as the bulk D.N.P., correct?

20 A. Yes.

21 Q. And the label indicates that it  
22 contains 2,4-dinitrophenol, did I say that right?

23 A. Yeah.

24 Q. Close enough. And that's correct,  
25 right?



1 A. That is correct.

2 Q. All right. For R&D use only, correct,  
3 research and development use only, right?

4 A. That is correct.

5 Q. Not for drug, household or other uses,  
6 correct?

7 A. Yes.

8 Q. Sigma-Aldrich is an American company?

9 A. Yes, they are.

10 Q. They're still in business?

11 A. I believe so.

12 Q. They're still selling this?

13 A. I believe so.

14 Q. Well, I mean, you're the Food and Drug  
15 guy, right?

16 A. Yes.

17 Q. So are they or aren't they?

18 A. It's not something that's regulated by  
19 F.D.A.

20 Q. This product contains 2,4-  
21 dinitrophenol, right?

22 A. That's correct.

23 Q. This whole case, the last two days  
24 we've been talking about the regulation of 2,4-  
25 dinitrophenol, right?

1 A. Yes.

2 Q. You just told the Jury that it's not  
3 regulated?

4 A. That's correct.

5 Q. Okay. Sir, may we put up G One,  
6 please? Court's indulgence. So this -- this is where  
7 this started, right, this Twitter feed here, correct?

8 A. Yes, sir.

9 Q. He has thirty-four followers. Is that  
10 right?

11 A. Yes.

12 Q. And he has tweeted fifty-seven times  
13 since 2008, correct?

14 A. That's what it says, yes.

15 Q. I mean, that's the record, right?  
16 Correct?

17 A. Yes.

18 Q. All right. Can we put up G Two? So  
19 it's a -- this is, again, another exhibit that was  
20 introduced, correct?

21 A. Yes, it is.

22 Q. And it says that it's a plant  
23 fertilizer, and growth regulator similar to a rooting  
24 hormone. That's accurate, right?

25 A. I'm not an expert in that field. So I

1 don't know.

2 Q. Well, it's pure yellow crystalline  
3 powder. That's accurate, right?

4 A. That is accurate.

5 Q. It is 2,4-Dinitrophenol. That's  
6 accurate, right?

7 A. Yes, it is.

8 Q. One twenty-five milligram capsule.  
9 That's accurate, right?

10 A. Yes, it is.

11 Q. Not for human consumption. That's  
12 accurate, right?

13 A. It is.

14 Q. Shipping via priority mail, email  
15 tracking, that's accurate, right? And free insurance,  
16 that's accurate, right?

17 A. Yes.

18 Q. As a retired physician, I've used  
19 D.N.P. for patients when it was legal and discovered that  
20 it's mechanism of action worked on plants to -- to slow  
21 growth. The capsules are in the second picture. That's  
22 accurate, right?

23 A. Slow growth, yes. I would guess.

24 Q. Okay. Can we put up G Twenty-eight,  
25 please? That's how the package that you ordered in your

1           undercover capacity arrived, correct?

2                   A.    That is correct.

3                   Q.    And the label says 2,4-Dinitrophenol  
4           two hundred milligrams, right?

5                   A.    Yes.

6                   Q.    And then, it has a hundred and twenty-  
7           five milligrams. Thank you. You read my mind. A hundred  
8           twenty-five -- a hundred and thirty-three milligrams dry  
9           weight. That's correct?

10                  A.    That is correct.

11                  Q.    Yes?

12                  A.    Yes. That's correct.

13                  Q.    The expiration date is what it is. Do  
14           you know if it's correct or not?

15                  A.    I'd say given at that time, yes, it  
16           was 2018, so.

17                  Q.    All right. And then the label says,  
18           not for human consumption, correct?

19                  A.    That's correct.

20                  Q.    And I -- I hate to ask you this, but  
21           can we go to G One twenty-three? Those are the labels  
22           that look identical to the label on G Twenty-eight. Is  
23           that correct?

24                  A.    Identical? Similar?

25                  Q.    Similar?

1 A. Yes.

2 Q. Okay. But again, 2,4-Dinitrophenol,  
3 Sigma-Aldrich, ninety-nine percent S.A., that's accurate,  
4 right?

5 A. That part is, yeah.

6 Q. Pre-ordered, www.fortissupply,  
7 correct?

8 A. On that label, yeah, it does contain  
9 the website.

10 Q. And then G Fifty-two, if we could put  
11 up. That's again, another order that you had ordered  
12 under your name, correct? Under your undercover name?

13 A. Fifty-two, it was either me or the --  
14 I'm not a hundred percent sure if it -- just given that  
15 picture without the packaging to see if it was me or the  
16 other undercover agent.

17 Q. Okay. But either way, the -- the  
18 label is what I'm interested in.

19 A. Yeah.

20 Q. The label says 2,4-Dinitrophenol,  
21 correct?

22 A. That's correct.

23 Q. Sigma-Aldrich, ninety-nine percent  
24 S.A., correct?

25 A. Yes.

1 Q. And that's consistent with the bottles  
2 that we showed in One thirty-six, correct?

3 A. The --

4 Q. I'll put --

5 A. -- the Sigma-Aldrich bottles, yes.

6 MR. GAMBURG: Can you put up One thirty-  
7 six? Can we zoom in on that top label?

8 THE MONITOR: The top part of it?

9 MR. GAMBURG: Yes, sir.

10 BY MR. GAMBURG: (Cont'g.)

11 Q. It says S.A. less than ninety-eight  
12 percent, less than or equal to ninety-eight percent, is  
13 that fair?

14 A. That's what the bottle says, yes.

15 Q. Okay. If we could put up G Twenty-  
16 five. Sir, you -- you had already told the Jury that you  
17 were acting in an undercover capacity. You got what we  
18 identified as G Twenty-eight in the mail with that label,  
19 correct?

20 A. Yes.

21 Q. Okay. And so now you, in your  
22 undercover capacity, you're trying to get Dr. Merlino to  
23 make certain admissions to you, right?

24 A. Yes.

25 Q. You're trying to tighten up the case

1 and have him tell you, you know, it's okay, you can use it  
2 for human consumption, and I'll tell you how, right?

3 A. Yes.

4 Q. And his response to you is, depending  
5 on the size of the plant, most growers start with one  
6 capsule a day, dissolved in one gallon of water. Max is  
7 three per day. If it's response is less than desired in  
8 affecting growth. Was that his response?

9 A. That was his response, yes.

10 Q. Did you take one of these capsules and  
11 put it in a gallon of water?

12 A. I did not.

13 Q. Do you know that it is commonly used  
14 for that purpose, right?

15 A. Mixing it with water?

16 Q. No. For plant growth?

17 A. I -- I did not know that.

18 Q. It's on all the documentation,  
19 correct?

20 A. Whose documentation?

21 Q. For -- for D.N.P., for all the  
22 articles that we looked at, for the things that were sent  
23 by Dr. Merlino for plant growth?

24 A. That's what he listed it as, yes.

25 Q. You didn't check that out?

1                   A.    The -- the research that I found that  
2                   was D.N.P. was actually a herbicide. So I would assume  
3                   that would've killed things.

4                   Q.    But you didn't look into it at all?

5                   A.    I'm just saying what little research I  
6                   did on it. What I found is that D.N.P. was a herbicide,  
7                   not a fertilizer.

8                   Q.    Didn't you want to know why Sigma-  
9                   Aldrich was doing research and development or -- or  
10                  selling this stuff in the United States for research and  
11                  development?

12                  A.    That's not my purview, no.

13                  Q.    Your purview is D.N.P.

14                  A.    When intended for use as a drug, yes.

15                  Q.    Okay. You didn't wonder what other  
16                  uses it could be?

17                  A.    Again, I'm only interested when it's  
18                  intended to be used as a drug.

19                  Q.    Okay. So when he responds to you with  
20                  the email telling you what to do, how to use it with  
21                  plants, you continued to buy it, correct?

22                  A.    Yes.

23                  Q.    Even though all the labeling says not  
24                  for human consumption, correct?

25                  A.    That is correct.



1 Q. Did you ever follow-up with any other  
2 emails that we did not see asking him dosage amounts or  
3 anything of that nature?

4 A. Could you repeat the question?

5 Q. Sure. Did you ever follow-up with any  
6 emails, that we did not see, asking for dosage for humans?

7 A. Every email conversation I had with  
8 the Defendant was turned over in discovery. I can't --

9 Q. Yeah.

10 A. -- recall if we displayed every email  
11 here.

12 Q. Okay. Can I see -- can we put G  
13 Eighty-two up, please?

14 The G Eighty-two was sent to you, again, in  
15 your undercover capacity or is that one of your fellow  
16 agents?

17 A. So that was a fellow agent.

18 Q. Okay. When Jason and -- and whoever  
19 it is, is not relevant. I trust that it was a fellow  
20 agent went to purchase it. He was responded to -- with an  
21 agress -- Agro Fortis Supply D.N.P. purchase agreement,  
22 correct?

23 A. That is correct.

24 Q. And to the best of your knowledge --  
25 well, it's on the email. Jason replies, "all understood,"

1 correct?

2 A. Yes.

3 Q. So he acknowledged that he's of legal  
4 age. That his purchase of D.N.P. is for agricultural  
5 purposes, he has reviewed the attached D.N.P., M.S.D.S.  
6 safety -- material safety data sheet, and understood that  
7 D.N.P. is unsafe for human consumption, right?

8 A. Yes.

9 Q. If purchasing encapsulated D.N.P., I  
10 understand it is for use to make standardized dilutions  
11 for applications to plants. I am not purchasing capsules  
12 for oral consumption. D.N.P. is considered hazardous to  
13 human health and excessive exposure and -- where ingested  
14 has led to death. That's the agreement that was signed,  
15 right?

16 A. Yes.

17 Q. Okay. And that agreement is  
18 consistent with the labeling that was received by either  
19 yourself or Jason in their undercover capacity?

20 MS. BURNES: I'm going to object to the  
21 term labeling in this context.

22 MR. GAMBURG: It's a label, Judge.

23 THE COURT: I -- I think there is a  
24 statutory definition of label -- label and labeling. And  
25 that's the basis for the objection, which I would be

1           instructing the Jury on at a later stage.

2                       MR. GAMBURG:   Yes, sir.

3                       THE COURT:   So I want you to try  
4           rephrasing?

5                       MR. GAMBURG:   Sure.

6                       BY MR. GAMBURG:   (Cont'g.)

7                       Q.    The label that you and Jason received  
8           in your undercover capacity, this is consistent with that  
9           label, correct?

10                      A.    Yes.

11                      Q.    On the email One sixty-one.  This is  
12           the individual that was a -- a runner, correct?

13                      A.    Yes, that's correct.

14                      Q.    And on the top of that email, this  
15           David Freek indicates that they're discussing this other  
16           gentleman that had an odd order.  And he says, "I just  
17           vetted him online.  He seems like he's very much legit.  
18           He uses A.A.S and is on T.R.T.  I'm sure he is fine.

19                      I looked at his last fifty posts.  And  
20           Bill, that's a very good idea.  No accountability then on  
21           your end, and I mean, that's what he's advertised on the  
22           site.  Legally, you're in the clear then.  Know that  
23           anyone I send your way knows to ask purchasing for  
24           fertilizer usage, looks good to me, Dave," right?

25                      A.    That's what it says, yes.

1 Q. Did Bill respond to that?

2 A. Not that I see here, no.

3 Q. So he didn't say, yeah, I got him on  
4 this one. Nothing, no response, right?

5 A. That's correct.

6 Q. With respect to the -- to the search  
7 warrant, the house, everything was out in the open except  
8 for the bulk amounts, which were in the gun safe, correct?

9 A. Yes, that's correct.

10 Q. And we already know from prior  
11 testimony you were present for when he made the complaint  
12 about his bulk product being seized, the estimated value  
13 was four hundred dollars, and you said, hey, you know,  
14 it's not four hundred, you're way over priced. It's  
15 probably two hundred or words to that effect. Do you  
16 remember that?

17 A. I do not.

18 MR. GAMBURG: Okay. Let -- let me find  
19 that. Court's indulgence for one minute.

20 THE COURT: Sure.

21 BY MR. GAMBURG: (Cont'g.)

22 Q. If we can turn to, with your  
23 permission, I think G Four.

24 A. I think it might be G Five.

25 Q. G Four. So did you see that letter,

1       you could just zoom in on the appraised domestic value of  
2       the property. They -- they have -- you the appraised  
3       domestic value of four hundred and twenty for two point  
4       one kilograms of 2,4-Dinitrophenol, right?

5               A.    That's what it says, yes.

6               Q.    Okay. And then G Five, Dr. Merlino  
7       writes back and says, hey, you know, your estimate val,  
8       should be value, is two hundred percent over retail prices  
9       of vendors in the U.S. See attached price sheet. Right?

10              A.    I see.

11              Q.    So he says, look it's two -- two  
12       hundred four dollars, correct?

13              A.    That's what it says here.

14              Q.    Okay. So everything is out in the  
15       open in the house, right? I mean, there is yellow dye on  
16       all the paperwork. He's got the big pill press out on the  
17       table. He's got all these bags, top to the bottom of the  
18       file cabinet, correct?

19              A.    Yes.

20              Q.    Wasn't trying to hide anything,  
21       correct?

22              A.    Wasn't until we got into the house to  
23       find that out.

24              Q.    And even when you called, he answered  
25       the phone, said, hello?

1 A. Yes, he did.

2 Q. Opened the door for you, so you didn't  
3 knock down the door, correct?

4 A. Correct.

5 Q. About nineteen people total to go  
6 execute the raid, right?

7 A. That's correct.

8 Q. His name is on the paperwork. His  
9 name is on the shipping label. His name was on the U.P.S.  
10 account, right?

11 A. Yes.

12 MS. BURNES: Objection, compound.

13 THE COURT: Cross examination. Overruled.

14 MR. GAMBURG: That's all I have, Judge.

15 Thank you.

16 THE COURT: All right. Any re-direct, Ms.  
17 Burnes?

18 MS. BURNES: Yes, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. BURNES:

21 Q. Special Agent Arcari, you were asked  
22 whether the F.D.A. regulates bulk sales of D.N.P., does  
23 it?

24 A. It does not.

25 Q. Okay. Is D.N.P. a chemical that's

1           legally sold by Sigma-Aldrich in the course of its  
2           chemical business?

3                     A.    Yes.

4                     Q.    Are there other chemicals that are  
5           legally sold in the United States that are not regulated  
6           by F.D.A.?

7                     A.    Yes.

8                     Q.    When is it that you, as an  
9           investigator, get involved in the investigation of a  
10          chemical?

11                    A.    When the intended use is for human  
12          consumption as a drug or food.

13                    Q.    And in the course of -- and -- and --  
14          and is that what generated the investigation in this case?

15                    A.    Yes, it is.

16                    Q.    In the course of your investigation,  
17          in a -- do you, as you did in this case, do you gather  
18          materials that contain the label that is the sticker that  
19          is affixed to a product?

20                    A.    That's correct.

21                    Q.    And why do you do that?

22                    A.    Just to -- because there would be  
23          certain elements that have to be on that label to be  
24          considered a drug.

25                    Q.    And do you also gather other

1 information during the course of your investigation with  
2 respect to labeling?

3 A. Yes.

4 Q. And why do you do that?

5 A. Because labeling of a drug, it is not  
6 necessarily what's in the package. It could be a website.  
7 It could be an advertisement. That's also considered  
8 labeling under the F.D.A. law.

9 Q. So in the course of your  
10 investigation, under drugs that are misbranded and  
11 mislabeled, you gather all of that information?

12 A. That's correct.

13 Q. It's not simply about the sticker?

14 A. That's right.

15 Q. Let's take a look at G Two. You were  
16 asked on cross examination about the -- about the weight  
17 push in here about -- as a retired physician, I used  
18 D.N.P. for patients when it was legal. In the course of  
19 your investigation, when is it that the F.D.C.A. came --  
20 came into effect?

21 A. I believe it was 1938.

22 Q. For a document written in 2019, how  
23 old would somebody have to be, or shall I say, what's the  
24 likelihood of there being a living human being in 2019  
25 that was practicing as a physician prior to 1938?



1 A. I'd say it's very unlikely.

2 MS. BURNES: I want to finish up, Your  
3 Honor, just one moment, please.

4 THE COURT: It is fine, Counsel. Finish  
5 with this witness and start with a new one tomorrow.

6 MS. BURNES: Okay.

7 BY MS. BURNES: (Cont'g.)

8 Q. You were asked on cross examination  
9 about the label -- the sticker that appeared, the label on  
10 -- on some of the -- the packages. Were there undercover  
11 buys in this case that contained no sticker at all?

12 A. Yes, there was one.

13 Q. Okay. No other directions for use in  
14 that package?

15 A. No.

16 Q. And as an F.D.A. investigator, why is  
17 that of -- of evidentiary value to you?

18 A. Again, it goes to the intended use as  
19 a drug, you need directions. Labeling must contain an  
20 expiration date, lot number. If there is adverse events,  
21 the company's contact information must also be on the  
22 label to report it. It's --.

23 Q. Those are things that you would look  
24 for --

25 A. Exactly.

1 Q. -- in the course of your  
2 investigation?

3 A. Yes.

4 Q. And let's take a look at Government's  
5 Exhibit Five?

6 A. You were asked on cross examination  
7 about -- about D.N.P. being used as a herbicide. Is that  
8 something that in the course of your investigation, the --  
9 the Defendant made the claim that D.N.P. is used as a  
10 herbicide?

11 A. Yes.

12 Q. And what's your understanding of what  
13 a herbicide is?

14 A. A herbicide kills vegetation is my  
15 understanding.

16 Q. Is one of the common -- common words  
17 for herbicide a weedkiller?

18 A. Yeah.

19 Q. And directing your attention to  
20 Government's Eighty-two. You were -- you were asked on  
21 cross-examination about this customer acknowledgment for  
22 the purchase of D.N.P. Fair to say that the special agent  
23 making this purchase at your direction, when -- when he  
24 replied to Bill Merlino saying all understood to this  
25 customer acknowledgment. That was a lie, wasn't it?

1 A. Yes.

2 Q. And during the course of this  
3 investigation, you received -- you've reviewed several  
4 SimCare@gmail.com communications where customer after  
5 customer replied to this customer acknowledgment for  
6 D.N.P. saying that they understood. Is that right?

7 A. That's correct.

8 Q. And even you, though, were not asked  
9 to make that acknowledgment to make a -- a purchase in  
10 January of 2019?

11 A. I was not.

12 MS. BURNES: Your Honor, I have no further  
13 question.

14 MR. GAMBURG: Just a second.

15 RECROSS EXAMINATION

16 BY MR. GAMBURG:

17 Q. Yeah. But when you're asked about  
18 human consumption, you responded with plant information,  
19 right?

20 A. I'm sorry?

21 Q. When you asked about you consuming it,  
22 you were responded to with information on how to use it  
23 with plants, right? One pill, one gallon of water.

24 A. I don't believe I ever asked how to  
25 consume it.

1 Q. You did --.

2 A. I only asked him, how to use it.

3 Q. Right. You said, what dosage are --  
4 is appropriate and he responded one capsule for a gallon  
5 of water for plants, right?

6 A. He did respond to that. Yeah.

7 MR. GAMBURG: That's all I have, Judge.

8 THE COURT: All right. That will finish  
9 with the witness, and that will finish for the day. So  
10 you can stay put till we have -- send the Jury home.

11 THE WITNESS: Okay.

12 THE COURT: Ladies and gentlemen, thank you  
13 for your attention. I know these are long days. Remember  
14 don't talk about the case. Don't try to do any homework.  
15 We will do our best to reconvene properly at nine thirty  
16 tomorrow.

17 I know we've ordered your lunch. I can't  
18 vouch for the quality. I bring my own every day, but at  
19 least it's something. All right. So thank you for your  
20 attendance, for your service, for your concentration. It  
21 is greatly appreciated. Have a good night.

22 MR. BURNES: Thank you.

23 THE COURT: All right. We're still on the  
24 -- the record.

25 I'm going to deputize the special agent to

1 hand these to counsel when he steps off the stand. And  
2 what that is, is the current iteration of the Jury  
3 instructions, okay.

4 MS. BURNES: Thank you, Your Honor.

5 MR. GAMBURG: Thank you.

6 THE COURT: We'll hand them to you. And  
7 then, I'll have a little follow-up for you. All right.  
8 The first thing you need to know is when we added the  
9 venue provision, the table of contents got thrown out of  
10 whack and we have to correct that, okay.

11 MS. BURNES: Okay.

12 THE COURT: So make a note, here are the  
13 things to concentrate on, which are more substantive in  
14 nature. And -- and that would be, if I can find my post-  
15 it note. Actually, the one you have have a little post-it  
16 note on the -- on the version that went down there.

17 MS. BURNES: Do I?

18 MR. GAMBURG: I do not, Your Honor.

19 THE MONITOR: No, he means the one that's  
20 on the paperwork.

21 MR. GAMBURG: Do you have his notes?

22 MS. BURNES: No.

23 THE MONITOR: No.

24 THE COURT: All right. So I -- I had  
25 carefully written out the numbers and now, the post-it

1 note is gone, but for your edification venue, you want to  
2 look at --

3 MS. BURNES: Venue.

4 THE COURT: -- because there is two  
5 versions and that's not on the table of contents, but I  
6 believe it's twenty-nine or around twenty-nine.

7 MS. BURNES: Uh-huh.

8 THE COURT: There are the two instructions  
9 on consciousness of guilt. And -- and then, there are the  
10 substantive instructions at the end that begin around  
11 thirty. All right. So we'll clean up the table of  
12 contents tonight.

13 And as I said before, up until the  
14 substance, we -- I'm not sure how many of the instructions  
15 are relevant. So some of them may drop out. They're not  
16 in a final form.

17 MS. BURNES: Okay.

18 THE COURT: But with respect to the  
19 substantive provisions, they're close to final form and  
20 that's obviously what's most important.

21 MS. BURNES: Okay.

22 THE COURT: So if everyone could direct  
23 your attention to that overnight, I think that would be  
24 useful.

25 MS. BURNES: Your Honor, as a matter of

1 scheduling and I don't know if we need to do this on the  
2 record or not.

3 THE COURT: I -- I can't go off because  
4 Chris is not here so.

5 MS. BURNES: Okay. Your Honor, I just  
6 wanted to make sure I understood where the -- the  
7 government has three witnesses tomorrow. I would expect  
8 that I have -- I -- that Mr. Gordon would go first, and he  
9 is going to be a lengthier witness, even though others  
10 might be shorter.

11 In terms of the Government sort of  
12 (unintelligible) Mr. Gordon would go first. We have Dr.  
13 Goldberg and we have Dr. Simone. And then a brief recall  
14 of Agent Arcari. So I just want to ensure, does the Court  
15 intend to review the Jury instructions prior to our nine  
16 thirty?

17 THE COURT: If we -- if we can, I think  
18 that would be useful.

19 MS. BURNES: Okay.

20 THE COURT: It seems clear to me we're not  
21 going to charge the Jury before lunch.

22 MS. BURNES: Okay.

23 THE COURT: So we could also do it at the  
24 lunch break, but if there, we need to do any edits or  
25 anything, it would give us more time if we do it in the

1 morning before the Jury, so --

2 MS. BURNES: Okay.

3 THE COURT: -- can counsel make themselves  
4 available?

5 MR. GAMBURG: Yes.

6 THE COURT: All right. Why don't we do our  
7 best to try to convene roughly around nine, if you're --

8 MS. BURNES: Nine.

9 THE COURT: -- a little bit after that.  
10 And if there's not really a lot of input, you can maybe  
11 just call or email and say there is not a lot to discuss.

12 MS. BURNES: Okay.

13 THE COURT: So.

14 MS. BURNES: Thank you, Your Honor.

15 THE COURT: All right.

16 MR. GAMBURG: Okay. And Judge, to the  
17 extent that the Defendant isn't over, we can start without  
18 him, I have his permission.

19 THE COURT: All right. I appreciate that.  
20 And again, if after review, there is not a lot to discuss,  
21 you know, we don't need to be here at nine. We can be  
22 here at -- I'll leave it to you, how much we need to  
23 discuss.

24 MR. GAMBURG: I just want to drop off the  
25 (unintelligible) for the marshals in the morning.



1 THE COURT: No, I understand.

2 MR. GAMBURG: Because I neglected them  
3 today.

4 THE COURT: We'll work -- we'll work it  
5 out, Mr. Gamburg, okay.

6 MR. GAMBURG: Thank you, Your Honor.

7 THE COURT: All right. Good. And thanks  
8 to our marshals for their service and with that we bid you  
9 all good night.

10 MS. BURNES: Thank you, Your Honor.

11 MR. GAMBURG: Thank you, Your Honor.

12 (Off the record at 16:32:22)

13 CERTIFICATION

14 I, Judith Spriggs, court approved transcriber, certify that  
15 the foregoing is a correct transcription from the official  
16 electronic sound recording of the proceeding in the above-  
17 entitled matter.

18 

19 \_\_\_\_\_/  
Judith Spriggs  
20 Associated Reporters Int'l., Inc. 10th September, 2022

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